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WASHINGTON, DC

WHEN: September 13, 2000, at 9:00 a.m.

WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 65, No. 165
Thursday, August 24, 2000

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–076–3]

Oriental Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Oriental fruit fly regulations by removing the quarantine on a portion of Los Angeles County, CA, and by removing the restrictions on the interstate movement of regulated articles from that area. The quarantine was necessary to prevent the spread of Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from this portion of Los Angeles County, CA, and that the quarantine and restrictions on the interstate movement of regulated articles from this area are no longer necessary. This portion of Los Angeles County, CA, was the last remaining area in California quarantined for the Oriental fruit fly. As a result of the interim rule, there are no longer any areas in the continental United States quarantined because of the Oriental fruit fly.

EFFECTIVE DATE: The interim rule became effective on May 2, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Wilmer E. Snell, Operations Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301)734–8747.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective May 2, 2000, and published in the **Federal Register** on May 8, 2000 (65 FR 26487–26488, Docket No. 99–076–2), we amended the Oriental fruit fly regulations, contained in §§ 301.93 through 301.93–10, by removing a portion of Los Angeles County, CA, from the list of quarantined areas in § 301.93–3(c). That action relieved unnecessary restrictions on the interstate movement of regulated articles from this area.

Comments on the interim rule were required to be received on or before July 7, 2000. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 65 FR 26487–26488 on May 8, 2000.

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 18th day of August 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–21647 Filed 8–23–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–082–6]

Mexican Fruit Fly Regulations; Removal of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Mexican fruit fly regulations by removing the regulated portion of San Diego County, CA, from the list of regulated areas. We have determined that the Mexican fruit fly has been eradicated from this area and that restrictions on the interstate movement of regulated articles from this area are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action relieves unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area. As a result of the interim rule, there are no longer any areas regulated for the Mexican fruit fly in the State of California.

EFFECTIVE DATE: The interim rule became effective on July 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Stefan, Operations Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

In an interim rule effective July 25, 1999, and published in the **Federal Register** on July 26, 1999 (64 FR 40281–40282, Docket No. 98–082–5), we amended the Mexican fruit fly regulations (contained in 7 CFR 301.64 through 301.64–10) by removing a portion of San Diego County, CA, from the list of regulated areas in § 301.64–3(c). That action relieved unnecessary restrictions on the interstate movement of regulated articles from this area. As a result of that action, there are no longer any areas regulated for the Mexican fruit fly in the State of California.

Comments on the interim rule were required to be received on or before

September 24, 1999. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 64 FR 40281–40282 on July 26, 1999.

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this *18th* day of August 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–21646 Filed 8–23–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–007–2]

Imported Fire Ant; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the imported fire ant regulations by designating as quarantined areas all or portions of 2 counties in Arkansas, 14 counties in North Carolina, and 19 counties in Tennessee. As a result of that action, the interstate movement of regulated articles from those areas is restricted. That action was necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States. We also removed references to the Imported Fire Ant Program Manual in the appendix to the imported fire ant regulations.

EFFECTIVE DATE: The interim rule became effective on May 11, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Milberg, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5255.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on May 11, 2000 (65 FR 30337–30341, Docket No. 00–007–1), we amended the imported fire ant regulations, contained in 7 CFR 301.81 through § 301.81–10, by adding 2 counties in Arkansas, 14 counties in North Carolina, and 19 counties in Tennessee to the list of quarantined areas in § 301–81–3(e). The two affected counties in Arkansas are Clark and Hot Springs. The 14 affected counties in North Carolina are Bertie, Camden, Chatham, Chowan, Currituck, Edgecomb, Gaston, Greene, Martin, Mecklenberg, Pasuotank, Perquimans, Wake, and Wayne. The 19 affected counties in Tennessee are Decatur, Fayette, Franklin, Giles, Haywood, Henderson, Lewis, Lawrence, Lincoln, Madison, Marion, Marshall, McMinn, Meigs, Monroe, Moore, Perry, Rhea, and Shelby. This action was necessary because surveys conducted by the Animal and Plant Health Inspection Service and State and county agencies revealed that the imported fire ant had spread to these areas.

Further, we amended the appendix to Subpart—Imported Fire Ant by removing the references to the Imported Fire Ant Program Manual because there is no relevant information in the Imported Fire Ant Program Manual that is not already available to inspectors in other materials.

Comments on the interim rule were required to be received on or before July 10, 2000.

We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act. Further, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This action affirms an interim rule that amended the imported fire ant regulations by designating as quarantined areas portions of 35 counties in Arkansas, North Carolina, and Tennessee. As a result of that action, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

Affected entities in the quarantined areas include nurseries and greenhouses, farm equipment dealers, construction companies, and all those who sell, process, or move regulated articles from and through quarantined areas. It is now necessary to treat and certify all regulated articles before moving them interstate from the newly quarantined areas.

The 1997 market value of agricultural products sold in the 35 affected counties was $1.7 billion. Thus, this large agricultural economy is at risk due the injurious potential of the imported fire ants.

Within Arkansas' two affected counties, there are at least 15 entities that may be affected by the rule. All 15 entities are small, according to the Small Business Administration (SBA) definition. In terms of 1997 agricultural sales, Clark County received $18.725 million from crop (including greenhouse and nursery) sales and livestock sales, and Hot Springs County received $10.135 million in sales.

Within Tennessee's 19 affected counties, there are 272 entities that may be affected by the rule, and at least 72 of these entities are small, according to the SBA definition. These 19 counties received $447.16 million from crop (including greenhouse and nursery) sales and livestock sales in 1997.

Within North Carolina's 14 affected counties, there are 264 entities that may be affected by the rule. At least 253 of these entities are small. These 14 counties received $1.225 billion from crop (including greenhouse and nursery) sales and livestock sales in 1997.

The market value of sales of agricultural products in the 35 affected counties in the States of Arkansas, Tennessee, and North Carolina were $18.9 million, $477.2 million, and 1.24 billion, respectively, in 1997. According to the 1997 U.S. Agricultural Census, at least 340 of the 551 agricultural entities

found in the 35 affected counties are small. We do not know how many of these entities move regulated articles interstate; however, the availability of various treatments for imported fire ant, which permit the interstate movement of regulated articles with only a small additional cost, minimizes any adverse economic effects due to this rule. For example, the value of a standard shipment of nursery plants is between $10,000 to $250,000, and the cost of treating a standard shipment of plants is only around $200. Entities that do not move regulated articles interstate remain unaffected by the rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 65 FR 30337–30341 on May 11, 2000.

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 18th day of August 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–21649 Filed 8–23–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–082–2]

Pine Shoot Beetle; Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the pine shoot beetle regulations by removing pine wreaths and garlands from the list of regulated articles. We believe that these commodities do not present a risk of spreading pine shoot beetle. This action will eliminate restrictions on the movement of pine wreaths and garlands from areas quarantined because of pine shoot beetle.

EFFECTIVE DATE: August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Markham, Regional Program Manager, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606–5202; (919) 716–5582; or Ms.Coanne E. O'Hern, National Survey Coordinator, 4700 River Road, Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

Pine shoot beetle is a pest of pine trees. Pine shoot beetle can cause damage in weak and dying trees, where reproduction and immature stages of pine shoot beetle occur, and in the new growth of healthy trees. During ''maturation feeding,'' young beetles tunnel into the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in host trees. Adults can fly at least 1 kilometer, and infested trees and pine products are often transported long distances; these factors may result in the establishment of pine shoot beetle populations far from the location of the original host tree. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

The regulations at 7 CFR 301.50 through 301.50–10, ''Subpart—Pine Shoot Beetle,'' restrict the interstate movement of regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle into noninfested areas of the United States.

On December 21, 1999, we published in the **Federal Register** (64 FR 71322–71323, Docket No. 99–082–1) a proposal to amend the regulations by removing pine wreaths and garlands from the list of regulated articles in § 301.50–2. We proposed this action to allow pine wreaths and garlands to move without restriction from a quarantined area.

We solicited comments on our proposal for 60 days, ending February 22, 2000. We received three comments by that date. They were from State departments of agriculture and a regional plant board. One commenter supported the proposed rule. The remaining commenters expressed concerns about the possible presence of pine shoot beetle in pine wreaths and garlands moving out of a quarantined area.

The commenters noted that the growing location of pine used to create wreaths and garlands, local temperature and weather patterns at time of harvest, and storage conditions of pine materials affect when pine shoot beetles move from tree shoots to overwintering sites. This means that pine materials used to make wreaths and garlands could be harvested while pine shoot beetles are still present in tree shoots. The commenters asked that we maintain measures to mitigate the risk of spreading this pest when materials for pine wreaths and garlands are harvested while pine shoot beetles are in tree shoots.

We believe that the way in which pine wreaths and garlands are manufactured greatly reduces the risk that these commodities will carry pine shoot beetles. To increase the value and enhance the appearance of their products, producers of pine wreaths and garlands choose the freshest, healthiest, and most attractive pine material to create wreaths and garlands. First, this means that producers cut the pine material from the tree as close to the time of sale as possible. Therefore, because most pine wreaths and garlands are sold for the Christmas holiday, the material is removed from pine trees after pine shoot beetles have moved to the base of the tree for overwintering. Second, this means that producers do not include any brown, thinning, or damaged pine shoots in wreaths and garlands. Pine shoots that have been attacked by pine shoot beetles droop, are discolored, and break easily. Therefore, selection of the healthiest and most attractive pine material helps ensure that no matter the time of year, producers are excluding material that could be infested with pine shoot beetles.

In addition, most often ''pine'' wreaths produced in quarantined areas are actually made from balsam fir (*Abies balsamea*) adorned by minimal sprigs of pine and other species, such as arborvitae (*Thuja* spp.). Balsam fir is not a host of pine shoot beetle. Likewise, pine garlands produced in quarantined areas are generally made from eastern white pine (*Pinus strobus*), a pine species that is not a preferred host for pine shoot beetle. Although pine shoot beetles will feed on the shoots of, and breed in, eastern white pine and other pine species, pine shoot beetles prefer to feed on and breed in Scots pine (*Pinus sylvestris*) or jack pine (*Pinus banksiana*). However, even if pine wreaths and garlands were made of favored host pine material, we believe that the way these commodities are manufactured precludes the presence of pine shoot beetles.

Therefore, for the reasons given in the proposed rule and in this document, we

are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Producers of pine wreaths and garlands are in the process of taking orders and planning for this year's shipping season. Making this rule effective immediately will allow affected producers and others in the marketing chain to plan more effectively for the approaching shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the pine shoot beetle regulations by removing pine wreaths and garlands from the list of regulated articles. We believe that these commodities do not present a risk of spreading pine shoot beetle. This action will eliminate restrictions on the movement of pine wreaths and garlands from areas quarantined because of pine shoot beetle.

In 1995, nurseries and other producers in quarantined areas earned an average of four percent of their revenue from wreaths and garlands. However, over the next 3 years, that amount doubled; in 1998, nurseries and other producers in quarantined areas increased their earnings from the sale of wreaths and garlands to an average of 8 to 10 percent of their revenue.

The highest levels of production of these commodities in quarantined areas occurs in Northeastern States. In 1998, production of wreaths and garlands amounted to approximately $5.3 million in Vermont, approximately $3 million in New Hampshire, and approximately $10 to $12 million in Maine. Most wreaths and garlands produced in quarantined areas are sold locally.

Most of the producers of pine wreaths and garlands are small businesses, according to the standards of the Small Business Administration (SBA). Nurseries with less than $3.5 million in sales are classified as small business by the SBA. Therefore, approximately 65 percent of all nurseries are considered small businesses. In addition, Christmas tree farms with less than $500,000 in sales are considered small businesses. Nationwide, more than 70 percent of Christmas tree farms are considered small businesses.

This rule will eliminate treatment and certification requirements for pine wreaths and garlands. This will save affected producers time and money and will facilitate the movement of these commodities. Specifically, the elimination of treatment requirements for pine wreaths and garlands moving out of quarantined areas will save affected producers an average of 1 percent of revenue generated from the sale of these commodities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

2. In § 301.50–2, paragraph (a) is revised to read as follows:

§ 301.50–2 Regulated articles.

* * * * *

(a) Pine products (*Pinus* spp.), as follows: Bark nuggets (including bark chips); Christmas trees; logs with bark attached; lumber with bark attached; nursery stock; raw pine materials for pine wreaths and garlands; and stumps.

* * * * *

3. In § 301.50–10, the first sentence of paragraph (b) and the text only of paragraph (c) are revised to read as follows:

§ 301.50–10 Treatments.

* * * * *

(b) Cold treatment is authorized for cut pine Christmas trees, pine nursery stock, and raw pine materials for pine wreaths and garlands as follows: * * *

(c) Any one of these fumigation treatments is authorized for use on cut pine Christmas trees and raw pine materials for pine wreaths and garlands. Cut pine Christmas trees and raw pine materials for pine wreaths and garlands may be treated with methyl bromide at normal atmospheric pressure as follows: * * *

Done in Washington, DC, this 18th day of August 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–21648 Filed 8–23–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 00–030–2]

Change in Disease Status in Denmark Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations by adding Denmark to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in a native-born animal in that region. Denmark has been listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into

the United States. Therefore, the effect of this final rule is a continued restriction on the importation of ruminants that have been in Denmark and meat, meat products, and certain other products of ruminants that have been in Denmark. This final rule is necessary in order to update Denmark's disease status regarding bovine spongiform encephalopathy.

EFFECTIVE DATE: September 25, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Senior Staff Veterinarian, National Center for Import and Export, Products Program, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of bovine animals and other ruminants and is not known to exist in the United States.

It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants in regions in which BSE exists, or in which there is an undue risk of introducing BSE into the United States, are imported into the United States and are fed to ruminants in the United States. BSE could also become established in the United States if ruminants from regions in which BSE exists, or ruminants from regions in which there is an undue risk of introducing BSE into the United States, are imported into the United States.

Denmark has been listed in § 94.18(a)(2) as a region that presents an undue risk of introducing BSE into the United States. However, on February 25, 2000, Denmark's Ministry of Agriculture confirmed a case of BSE in a native-born animal. Therefore, on May 17, 2000, we published in the **Federal Register** (65 FR 31290–31291, Docket 00–030–1) a proposal to amend the regulations by adding Denmark to the list in § 94.18(a)(1) of regions where BSE exists. Regions on both lists are subject to the same restrictions on the importation of ruminants, meat, meat products, and certain other products of ruminants, into the United States.

We solicited comments concerning our proposal for 60 days ending July 17, 2000. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations by adding Denmark to the list of regions where BSE exists because the disease has been detected in a native-born animal in that region.

Denmark has been listed among the regions that present an undue risk of introducing BSE into the United States. Regardless of which of the two lists a region is on, the same restrictions apply to the importation of ruminants, meat, meat products, and certain other products of ruminants that have been in that region. Therefore, this final rule will not result in any change in the rules that apply to the importation of ruminants, meat, meat products, or other products of ruminants that have been in Denmark.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.18 [Amended]

2. Section 94.18 is amended as follows:

a. In paragraph (a)(1), by adding the word ''Denmark,'' in alphabetical order.

b. In paragraph (a)(2), by removing the word ''Denmark,''.

Done in Washington, DC this 18th day of August 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–21650 Filed 8–23–00; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T]

Credit by Brokers and Dealers; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Foreign Margin Stocks (Foreign List) is composed of certain foreign equity securities that qualify as *margin securities* under Regulation T. The Foreign List is published twice a year by the Board.

EFFECTIVE DATE: September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2837, or Scott Holz, Senior Counsel, Legal Division, (202) 452–2966, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only,* contact Janice Simms, Telecommunications Device for the Deaf (TDD) at (202) 872–4984.

SUPPLEMENTARY INFORMATION: Listed below is a complete edition of the Board's Foreign List. The Foreign List was last published on February 24, 2000 (65 FR 9207), and became effective March 1, 2000.

The Foreign List is composed of foreign equity securities that qualify as margin securities under Regulation T by meeting the requirements of § 220.11(c) and (d). Additional foreign securities qualify as margin securities if they are deemed by the Securities and Exchange Commission (SEC) to have a ''ready market'' under SEC Rule 15c3–1 (17 CFR 240.15c3–1) or a ''no-action'' position issued thereunder. This includes all foreign stocks in the FTSE World Index Series.

It is unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the Foreign List is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the Foreign List or the stocks thereon shall be an unlawful representation.

There are no additions to the Foreign List. The stock of GEHE AG from Germany is being removed because it appears on the FTSE World Index Series and continued inclusion on the Foreign List would be redundant. The stock of ASATSU INC. from Japan has been changed to ASATSU–DK INC. The following two Japanese stocks are being removed because they no longer substantially meet the provisions of § 220.11(d) of Regulation T:

BANK OF KINKI, LTD.
¥ 50 par common
SURUGA BANK LTD.
¥ 50 par common

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Foreign List specified in § 220.11(c) and (d). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of the Foreign List as soon as possible. The Board has responded to a request by the public and allowed approximately a one-week delay before the Foreign List is effective.

List of Subjects in 12 CFR Part 220

Brokers, Credit, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 220.2 and 220.11, there is set forth below a complete edition of the Foreign List.

Japan

AIWA CO., LTD.
¥ 50 par common
AKITA BANK, LTD.
¥ 50 par common
AOMORI BANK, LTD.
¥ 50 par common
ASATSU–DK INC.
¥ 50 par common
BANDAI CO., LTD.
¥ 50 par common
BANK OF NAGOYA, LTD.
¥ 50 par common
CHUDENKO CORP.
¥ 50 par common
CHUGOKU BANK, LTD.
¥ 50 par common
CLARION CO., LTD.
¥ 50 par common
DAIHATSU MOTOR CO., LTD.
¥ 50 par common
DAINIPPON SCREEN MFG. CO., LTD.
¥ 50 par common
DENKI KAGAKU KOGYO
¥ 50 par common
EIGHTEENTH BANK, LTD.
¥ 50 par common
FUTABA CORP.
¥ 50 par common
FUTABA INDUSTRIAL CO., LTD.
¥ 50 par common
HIGO BANK, LTD.
¥ 50 par common
HITACHI CONSTRUCTION MACHINERY CO., LTD.
¥ 50 par common
HITACHI SOFTWARE ENGINEERING CO., LTD.
¥ 50 par common
HITACHI TRANSPORT SYSTEM, LTD.
¥ 50 par common
HOKKOKU BANK, LTD.
¥ 50 par common
HOKUETSU BANK, LTD
¥ 50 par common
HOKUETSU PAPER MILLS, LTD.
¥ 50 par common
IYO BANK, LTD.
¥ 50 par common
JAPAN AIRPORT TERMINAL CO., LTD.
¥ 50 par common
JAPAN SECURITIES FINANCE CO., LTD.
¥ 50 par common
JUROKU BANK, LTD
¥ 50 par common
KAGOSHIMA BANK, LTD.
¥ 50 par common
KAMIGUMI CO., LTD.
¥ 50 par common
KATOKICHI CO., LTD.
¥ 50 par common
KEISEI ELECTRIC RAILWAY CO., LTD.
¥ 50 par common
KEIYO BANK, LTD.
¥ 50 par common
KIYO BANK, LTD.
¥ 50 par common
KOMORI CORP.
¥ 50 par common
KONAMI CO., LTD.
¥ 50 par common
KYOWA EXEO CORP.
¥ 50 par common
MATSUSHITA SEIKO CO., LTD.
¥ 50 par common
MAX CO., LTD.
¥ 50 par common
MICHINOKU BANK, LTD.
¥ 50 par common
MUSASHINO BANK, LTD.
¥ 50 par common
NAMCO, LTD.
¥ 50 par common
NICHICON CORP.
¥ 50 par common
NIHON UNISYS, LTD.
¥ 50 par common
NIPPON COMSYS CORP.
¥ 50 par common
NIPPON TRUST BANK, LTD.
¥ 50 par common
NISHI-NIPPON BANK, LTD.
¥ 50 par common
NISHI-NIPPON RAILROAD CO., LTD.
¥ 50 par common
NISSAN CHEMICAL INDUSTRIES, LTD.
¥ 50 par common
OGAKI KYORITSU BANK, LTD.
¥ 50 par common
Q.P. CORP.
¥ 50 par common
RINNAI CORPORATION
¥ 50 par common
RYOSAN CO., LTD.
¥ 50 par common
SAGAMI RAILWAY CO., LTD.
¥ 50 par common
SAIBU GAS CO., LTD.
¥ 50 par common
SAKATA SEED CORP.
¥ 50 par common
SANTEN PHARMACEUTICAL CO., LTD.
¥ 50 par common
SHIMADZU CORP.
¥ 50 par common

SHIMAMURA CO., LTD.
¥ 50 par common
SUMITOMO RUBBER INDUSTRIES, LTD.
¥ 50 par common
TAIYO YUDEN CO., LTD.
¥ 50 par common
TAKARA STANDARD CO., LTD.
¥ 50 par common
TAKUMA CO., LTD.
¥ 50 par common
TOHO BANK, LTD.
¥ 50 par common
TOHO GAS CO., LTD.
¥ 50 par common
TOKYO OHKA KOGYO CO., LTD.
¥ 50 par common
TOKYO TOMIN BANK, LTD.
¥ 500 par common
UNI-CHARM CORP.
¥ 50 par common
USHIO, INC.
¥ 50 par common
YAMAHA MOTOR CO., LTD.
¥ 50 par common
YAMANASHI CHUO BANK, LTD.
¥ 50 par common
YODOGAWA STEEL WORKS, LTD.
¥ 50 par common

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), August 18, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–21590 Filed 8–23–00; 8:45 am]

BILLING CODE 6210–01–P

EMERGENCY STEEL GUARANTEE LOAN BOARD

13 CFR Part 400

RIN 3003–ZA00

Emergency Steel Guarantee Loan Program; Participation in Unguaranteed Tranche

AGENCY: Emergency Steel Guarantee Loan Board.

ACTION: Final rule.

SUMMARY: The Emergency Steel Guarantee Loan Board (Board) is amending the regulations governing the Emergency Steel Guarantee Loan Program (Program). These changes are meant to clarify the regulations applicable to certain types of loan participations. The intent of these changes is to make explicit the Board's position with respect to participations in wholly unguaranteed tranches of loans that are guaranteed under the Program.

DATES: This rule is effective August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Marguerite S. Owen, General Counsel, Emergency Steel Guarantee Loan Board, U.S. Department of Commerce, Room H2500, Washington, D.C. 20230, (202) 219–0584.

SUPPLEMENTARY INFORMATION: On October 27, 1999, the Board published a final rule codifying at Chapter IV, Title 13, Code of Federal Regulations (CFR), regulations implementing the Program, as established in Chapter 1 of Public Law 106–51, the Emergency Steel Loan Guarantee Act of 1999 (64 FR 57932).

Section 400.210 sets forth terms and conditions governing assignment or transfer of loans and interests in loans between and among eligible lenders. This rule adds a new § 400.214 to make clear that certain types of participations in unguaranteed portions of loans are not transfers or assignments to a lender under the regulations, though a lender can participate in an unguaranteed portion of a loan. Further, this rule sets forth the terms and conditions governing participation in an unguaranteed tranche of a loan guaranteed under the Program. It does so by describing categories of entities that may act as participants without Board approval and providing that other entitites may act as participants with Board approval. This rule also contains a requirement for a minimum percentage of the unguaranteed portion of a guaranteed loan that a lender is required to hold without participation.

Administrative Law Requirements

Executive Order 12866

This final rule has been determined not to be significant for purposes of Executive Order 12866.

Administrative Procedure Act

This rule is exempt from the rulemaking requirements contained in 5 U.S.C. 553 pursuant to authority contained in 5 U.S.C. 553(a)(2) as it involves a matter relating to loans. As such, prior notice and an opportunity for public comment and a delay in effective date otherwise required under 5 U.S.C. 553 are inapplicable to this rule.

Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Congressional Review Act

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Intergovernmental Review

No intergovernmental consultations with State and local officials are required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Summary Impact Statement.

Executive Order 12630

This rule does not contain policies that have takings implications.

List of Subjects in 13 CFR Part 400

Administrative practice and procedure, Loan programs—steel, Reporting and recordkeeping requirements.

Dated: August 14, 2000.

Daniel J. Rooney,

Executive Secretary, Emergency Steel Guarantee Loan Board.

For the reasons set forth in the preamble, 13 CFR part 400 is amended to read as follows:

PART 400—EMERGENCY STEEL GUARANTEE LOAN PROGRAM

1.The authority citation for part 400 continues to read as follows:

Authority: Pub. L. 106–51, 113 Stat. 255 (15 U.S.C. 1841 note).

2. New § 400.214 is added to read as follows:

§ 400.214 Participation in unguaranteed tranche of guaranteed loan.

(a) Subject to paragraphs (b) and (c) of this section, a Lender may distribute the risk of a wholly unguaranteed tranche of a loan guaranteed under the Program by purchase of participations therein from the Lender if:

(1) Neither the loan note nor the Guarantee is assigned, conveyed, sold, or transferred in whole or in part;

(2) The Lender remains solely responsible for the administration of the loan; and

(3) The Board's ability to assert any and all defenses available to it under the Guarantee and the law is not adversely affected.

(b) The following categories of entities may purchase participations:

(1) Eligible Lenders;

(2) Private investment funds and insurance companies that do not usually invest in commercial loans;

(3) Steel company suppliers or customers, who are interested in participating in the unguaranteed tranche as a means of commencing or solidifying the supplier or customer relationship with the borrower; or

(4) Any other entity approved by the Board on a case-by-case basis.

(c) The Agent must maintain and may not grant participations in an interest in the unguaranteed portion of the loan, which as a percentage of the Agent's overall interest in the loan, is no less than the aggregate percentage of the loan which is not guaranteed. Every Lender, other than the Agent, must maintain and may not grant participations in an interest in the unguaranteed portion of the loan representing no less than five percent of such Lender's overall interest in the loan, except as otherwise provided in § 400.210(c)(3).

[FR Doc. 00–21424 Filed 8–23–00; 8:45 am]

BILLING CODE 3510–NC–P

EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD

13 CFR Part 500

RIN 3003–ZA00

Emergency Oil and Gas Guaranteed Loan Program; Financial Statements

AGENCY: Emergency Oil and Gas Guaranteed Loan Board.

ACTION: Final rule.

SUMMARY: The Emergency Oil and Gas Guaranteed Loan Board (Board) is amending the regulations governing the Emergency Oil and Gas Guaranteed Loan Program (Program). This change is meant to give the Board flexibility in determining the type of Borrower financial statements that Lenders of guaranteed loans are required to provide to the Board.

DATES: This rule is effective August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Marguerite S. Owen, General Counsel, Emergency Oil and Gas Guaranteed Loan Board, U.S. Department of Commerce, Room H2500, Washington, DC 20230, (202) 219–0584.

SUPPLEMENTARY INFORMATION: On October 27, 1999, the Board published a final rule codifying at Chapter V, Title 13, Code of Federal Regulations (CFR), regulations implementing the Program, as established in Chapter 2 of Public Law 106–51, the Emergency Oil and Gas Guaranteed Loan Program Act (64 FR 57932).

Section 500.211(f) sets forth reporting requirements imposed on Lenders of loans guaranteed under the Act. This rule provides that the type of annual financial statement of the borrower required to be furnished to the Board will be provided in the Guarantee between the Board and the Lender.

This rule is intended to allow the Board to determine on a case-by-case basis whether the annual financial statement of the borrower must be audited or CPA-reviewed.

Administrative Law Requirements

Executive Order 12866

This final rule has been determined not to be significant for purposes of Executive Order 12866.

Administrative Procedure Act

This rule is exempt from the rulemaking requirements contained in 5 U.S.C. 553 pursuant to authority contained in 5 U.S.C. 553(a)(2) as it involves a matter relating to loans. As such, prior notice and an opportunity for public comment and a delay in effective date otherwise required under 5 U.S.C. 553 are inapplicable to this rule.

Regulatory Flexibility Act

Because this rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Congressional Review Act

This rule has been determined to be not major for purposes of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Intergovernmental Review

No intergovernmental consultations with State and local officials are required because the rule is not subject to the provisions of Executive Order 12372 or Executive Order 12875.

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates, as that term is defined in the Unfunded Mandates Reform Act, on State, local and tribal governments or the private sector.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of a Federalism Summary Impact Statement.

Executive Order 12630

This rule does not contain policies that have takings implications.

List of Subjects in 13 CFR Part 500

Administrative practice and procedure, Loan programs—oil and gas, Reporting and recordkeeping requirements.

Dated: August 14, 2000.

Daniel J. Rooney,

Executive Secretary, Emergency Oil and Gas Guaranteed Loan Board.

For the reasons set forth in the preamble, 13 CFR part 500 is amended to read as follows:

PART 500—EMERGENCY OIL AND GAS GUARANTEED LOAN PROGRAM

1. The authority citation for part 500 continues to read as follows:

Authority: Pub. L. 106–51, 113 Stat. 255 (15 U.S.C. 1841 note).

2. Section 500.211(f)(1) is revised to read as follows:

§ 500.211 Lender responsibilities.

* * * * *

(f) * * *

(1) Financial statements for the borrower, as provided in the Guarantee;

* * * * *

[FR Doc. 00–21425 Filed 8–23–00; 8:45 am]

BILLING CODE 3510–NC–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–30]

Amendment of Class D Airspace: Simmons Army Airfield (AAF), NC; and Class E4 Airspace: Key West, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D Airspace at Simmons AAF, NC, and the Class E4 Airspace at Key West, FL, from continuous to part time, as the air traffic control towers at these locations are now part time.

EFFECTIVE DATE: 0901 UTC, November 30, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

The air traffic control towers at the Simmons AAF and Key West International Airports no longer operate continuously. Therefore, the Class D airspace at Simmons AAF, NC, and the Class E4 airspace at Key West, FL, must be amended from continuous to part time. This rule will become effective on the date specified in the **EFFECTIVE DATE** section. Since this action eliminates the impact of controlled airspace on users of the airspace in the vicinity of the Simmons AAF and Key West International Airports during the hours the control towers are closed, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class D airspace at Simmons AAF, NC, and Class E4 airspace at Key West, FL. Class D airspace designations and Class E4 airspace designations are published in paragraph 5000 and paragraph 6004, respectively, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E4 airspace designations listed in the document will be published subsequently in this Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO NC D Simmons AAF, NC [Revised]

Simmons AAF, NC

(Lat. 35°07′55″N, long. 78°56′12″W)

That airspace extending upward from the surface to and including 1,400 feet MSL within a 3.9-mile radius of Simmons AAF, excluding the portion northwest of a line extending from lat. 35°11′47″N, long. 78°55′36″W; to lat. 35°06′16″N, long. 79°00′31″W; excluding this portion within the Fayetteville, NC, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E4 Airspace Areas Designated as an extension to a Class D Airspace Area.

* * * * *

ASO FL E4 Key West, FL [Revised]

Key West International Airport, FL

(Lat. 24°33′23″N, long. 81°45′34″W)

Key West NAS

(Lat. 24°34′33″N, long. 81°41′20″W)

Key West VORTAC

(Lat. 24°35′09″N, long. 81°48′02″W)

That airspace extending upward from the surface within 3.1 miles each side of Key West VORTAC 309° radial, extending from the 3.9-mile radius of the Key West International Airport and the 5.3-mile radius of the Key West NAS to 7 miles northwest of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on August 8, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–21493 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airplane Docket No. 00–ASO–27]

Removal of Class E Airspace; Melbourne, FL, and Coca Patrick AFB, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E2 airspace at Melbourne, FL, and Cocoa Patrick AFB, FL. The weather and radio communications requirements for Class E2 Airspace at Melbourne International and Patrick AFB Airports, when the respective Air Traffic Control (ATC) towers close, no longer exist. Therefore, the Class E2 airspace for the Melbourne International and Patrick AFB Airports must be removed.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

After Patrick AFB Radar Approach Control (RAPCON) was decommissioned, air traffic control responsibility for the Melbourne International and Patrick AFB Airports was transferred from Miami ARTC Center to Daytona Beach Approach Control, when the Melbourne and Patrick AFB (ATC) towers close. Daytona Beach Approach Control does not have the communications and weather capability to provide ATC service to the surface as required for Class E2 airspace. Therefore, the Class E2 airspace must be removed. This rule will become effective on the date specified in the **DATE** section. Since this action removes the Class E2 airspace, and as a result, eliminates the impact of Class E2 airspace on users of the airspace in the vicinity of the Melbourne International and Patrick

AFB Airports, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class E2 airspace at Melbourne, FL and Cocoa Patrick AFB, FL.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO FL E2 Melbourne, FL [Remove]

* * * * *

ASO FL E2 Cocoa Patrick AFB, FL [Remove]

* * * * *

Issued in College Park, Georgia, on July 18, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Division.

[FR Doc. 00–21637 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30176; Amdt. No. 2008]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to included ''or GPS or FMS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove ''or GPS or FMS'' from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various others types of navigational equipment. In consideration of the above, those SIAP's currently designated as ''RNAV'' will be redesignated as ''VOR/DME RNAV'' without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on August 18, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

** * * Effective October 5, 2000*

Northway, AK, Northway VOR/DME or GPS–A, Orig, CANCELLED

Northway, AK, Northway VOR/DME–A, Orig

Unalaska, AK, Unalaska NDB or GPS–A, Amdt 2A, CANCELLED

Unalaska, AK, Unalaska NDB–A, Amdt 2A

Grinnell, IA, Grinnell Regional VOR/DME or GPS RWY 31, Amdt 2, CANCELLED

Grinnell, IA, Grinnell Regional VOR/DME RWY 31, Amdt 2

Connersville, IN, Connersville/Mettel Field, NDB or GPS RWY 18, ORIG–A, CANCELLED

Connersville, IN, Connersville/Mettel Field, NDB RWY 18, ORIG–A

Hays, KS, Hays Regional, NDB or GPS RWY 34, Amdt 2B, CANCELLED

Hays, KS, Hays Regional, NDB RWY 34, Amdt 2B

The FAA published an Amendment in Docket No. 30150, Amdt. No. 2005 to Part 97 of the Federal Aviation Regulations (Vol 65 FR No. 155 Page 48891; dated 10 August 2000) under section 97.23 effective 5 October 2000, which is hereby amended as follows:

Rescind the following:

Watertown, NY, Watertown Intl, VOR or GPS RWY 7, Amdt 13A, CANCELLED

Watertown, NY, Watertown Intl, VOR RWY 7, Amdt 13A

[FR Doc. 00–21636 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30175; Amdt. No. 2007]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs

Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory rule'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on August 18, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

Part 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * EFFECTIVE UPON PUBLICATION

FDC date	State	City	Airport	FDC No.	SIAP
07/02/00	LA	Oakdale	Allen Parish	0/8721	NDB RWY 35, Orig ... REPLACES TL00–18
07/31/00	LA	Shreveport	Shreveport Regional	0/9318	LOC RWY 5, AMDT 1 ... THIS REPLACES FDC 0/8641
08/02/00	MN	Duluth	Duluth Intl	0/8786	ILS RWY 27, AMDT 8 ...
08/03/00	AZ	Chandler	Chandler Muni	0/8826	GPS RWY 4L, Orig ...
08/03/00	OK	Stillwater	Stillwater Regional	0/8863	NDB RWY 17, Orig-A ...
08/04/00	AK	Bethel	Bethel	0/8905	GPS RWY 18, Orig ...
08/04/00	AK	Bethel	Bethel	FDC 0/8906	GPS RWY 36, Orig ...
08/04/00	AK	Kenai	Kenai Muni	0/8907	NDB–A, AMDT 3 ...
08/04/00	AK	Kenai	Kenai Muni	0/8908	GPS RWY 19R, Orig-A ...
08/04/00	AK	Kenai	Kenai Muni	0/8909	VOR/DME RWY 1L, AMDT 5A ...
08/04/00	AK	Kenai	Kenai Muni	0/8910	ILS RWY 19R, Orig ...
08/04/00	AK	Kenai	Kenai Muni	0/8911	VOR RWY 19R, AMDT 16A ...
08/04/00	CA	Blythe	Blythe	0/8899	VOR or GPS–A AMDT 6 ...

FDC date	State	City	Airport	FDC No.	SIAP
08/04/00	CA	Blythe	Blythe	0/8900	VOR/DME or GPS RWY 26 AMDT 5 ...
08/04/00	KS	El Dorado	Captain Jack Thomas/El Dorado	0/8917	GPS RWY 33, Orig ...
08/04/00	NJ	Newark	Newark Intl	0/8901	ILS RWY 22R AMDT 3 ...
08/04/00	NJ	Newark	Newark Intl	0/8902	ILS RWY 22L AMDT 10 ...
08/04/00	NJ	Newark	Newark Intl	0/8903	VOR/DME RWY 22R AMDT 4 ...
08/04/00	NJ	Newark	Newark Intl	0/8904	VOR/DME RWY 22L Orig ...
08/04/00	WI	Delavan	Lake Lawn	0/8936	NDB or GPS RWY 18, AMDT 2A ...
08/07/00	AK	Kenai	Kenai Muni	0/9097	GPS RWY 1L, Orig–A ...
08/07/00	CA	Santa Maria	Santa Maria Public/Captain G. Allan Hancock Field.	0/9107	VOR or GPS RWY 12 AMDT 13A ...
08/07/00	CA	Santa Maria	Santa Maria Public/Captain G. Allan Hancock Field.	0/9108	ILS RWY 12 AMDT 9B ...
08/07/00	MO	Rollq/Vichy	Rollq National	0/9109	VOR/DME RWY 4, AMDT 2B ...
08/07/00	OK	ADA	ADA Muni	0/9103	GPS RWY 35, Orig ...
08/08/00	GA	Atlanta	The William B. Hartsfield Atlanta Intl	0/9172	ILS RWY 9L AMDT 6B ...
08/08/00	LA	Baton Rouge	Baton Rouge Metropolitan/Ryan Field	0/9167	RADAR–1, AMDT 10 ...
08/08/00	LA	Lake Charles	Lake Charles Regional	0/9168	RADAR–1, AMDT 4 ... THIS REPLACES 0/8079
08/09/00	IA	Hampton	Hampton Muni	0/9244	NDB RWY 17, AMDT 4 ...
08/09/00	IA	Hampton	Hampton Muni	0/9245	VOR/DME RWY 35, AMDT 1 ...
08/09/00	LA	Opelousas	St. Landry Parish-Ahart Field	0/9214	NDB or GPS RWY 17, AMDT 1A ...
08/09/00	LA	Opelousas	St. Landry Parish-Ahart Field	0/9215	VOR/DME RWY 35, ORIG–A ...
08/09/00	LA	Opelousas	St. Landry Parish-Ahart Field	0/9216	GPS RWY 35, ORIG ...
08/09/00	WA	Seattle	Boeing Field/King County Intl	0/9209	ILS RWY 31L Orig ...
08/10/00	AK	Adak Island	Adak NAF	0/9300	NDB/DME RWY 23, Orig ...
08/10/00	FL	Miami	Miami Intl	0/9335	GPS RWY 9R, Orig-A ...
08/10/00	LA	Lake Charles	Lake Charles Regional	0/9324	VOR/DME RNAV RWY 5, AMDT 3A ...
08/10/00	MI	Newberry	Luce County	0/9308	VOR or GPS RWY 29, AMDT 11 ...
08/10/00	MI	Newberry	Luce County	0/9309	VOR or GPS RWY 11, AMDT 11 ...
08/10/00	MI	Three Rivers	Three Rivers Muni Dr. Haines	0/9311	RNAV RWY 22, ORIG ...
08/10/00	NC	Siler City	Siler City Municipal	0/9383	RNAV RWY 22 Orig ...
08/10/00	SC	Myrtle Beach	Myrtle Beach Intl	0/9325	ILS RWY 35 AMDT 1 ...
08/10/00	SC	Myrtle Beach	Myrtle Beach Intl	0/9326	RNAV RWY 17 ...
08/10/00	SC	Myrtle Beach	Myrtle Beach Intl	0/9328	RNAV RWY 35 ORIG ...
08/10/00	SC	Myrtle Beach	Myrtle Beach Intl	0/9329	ILS RWY 17 AMDT 1 ...
08/10/00	TN	Sparta	Upper Cumberland Regional	0/9398	ILS RWY 4 Orig ...
08/11/00	CA	Sacramento	Sacramento Executive	0/9458	ILS RWY 2, AMDT 22 ...
08/11/00	FM	Kosrae Island	Kosrae	0/9464	NDB/DME–A Orig ...
08/11/00	LA	Ruston	Ruston Regional	0/9452	NDB RWY 18, Orig–B ...
08/11/00	MT	Helena	Helena Regional	0/9478	VOR/DME or GPS–B, AMDT 6 ...
08/11/00	MT	Helena	Helena Regional	0/9479	ILS RWY 27, AMDT 1 ...
08/14/00	IA	Belle Plaine	Belle Plaine Muni	0/9683	GPS RWY 17, Orig ...
08/14/00	IA	Belle Plaine	Belle Plaine Muni	0/9684	GPS RWY 35, Orig ...
08/14/00	IA	Belle Plaine	Belle Plaine Muni	0/9685	NDB RWY 35, Orig ...
08/14/00	IL	Bloomington-Normal	Central IL Regal Arpt at Bloomington-Normal.	0/9616	ILS RWY 29, AMDT 8C ...
08/14/00	IL	Taylorville	Taylorville Muni	0/9643	NDB RWY 18, AMDT 3A ...
08/14/00	MI	Hancock	Houghton County Memorial	0/9633	LOC/DME BC RWY 13, AMDT 11B ...
08/14/00	NH	Laconia	Laconia Muni	0/9618	NDB or GPS RWY 8 AMDT 8 ...
08/14/00	OK	ADA	ADA Muni	0/9635	VOR/DME RWY 17, AMDT 1A ...
08/14/00	OK	ADA	ADA Muni	0/9640	GPS RWY 17, ORIG ...
08/14/00	OK	Ardmore	Ardmore Downtown Executive	0/9642	GPS RWY 35, ORIG ...
08/14/00	OK	Ardmore	Ardmore Downtown Executive	0/9658	VOR/DME RNAV RWY 35, AMDT 5A ...
08/14/00	OK	Bartlesville	Bartlesville Muni	0/9712	LOC RWY 17, AMDT 2 ...
08/14/00	OK	Bartlesville	Bartlesville Muni	0/9713	VOR/DME RWY 35, AMDT 5 ...
08/14/00	OK	Bartlesville	Bartlesville Muni	0/9727	VOR RWY 17, AMDT 10 ...
08/14/00	OK	Bartlesville	Bartlesville Muni	0/9729	NDB RWY 17, AMDT 1 ...
08/14/00	OK	Stillwater	Stillwater Regional	0/9637	VOR RWY 17, AMDT 13A ...
08/14/00	VT	Barre-Montpelier	Edwater F. Knapp State	0/9601	ILS RWY 17 AMDT 5 ...
08/16/00	LA	Lafayette	Lafayette Regional	0/9738	NDB or GPS RWY 22L, AMDT 4 ...
08/16/00	NJ	Berlin	Camden County	0/9780	GPS RWY 5, Orig ...
08/16/00	OK	Bartlesville	Bartlesville Muni	0/9753	GPS RWY 17, ORIG–A ...
08/16/00	OK	Bartlesville	Bartlesville Muni	0/9754	GPS RWY 35, ORIG–A ...
08/16/00	OK	Chickasha	Chickasha Muni	0/9772	GPS RWY 17, Orig ...
08/16/00	OK	Chickasha	Chickasha Muni	0/9773	GPS RWY 35, Orig ...
08/16/00	OK	Chickasha	Chickasha Muni	0/9774	VOR/DME RNAV RWY 35, AMDT 1 ...

[FR Doc. 00–21635 Filed 8–23–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30174; Amdt. No. 2006]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on August 18, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective October 5, 2000*

Naples, FL, Naples Muni, GPS RWY 5, Orig–A, CANCELLED
Naples, FL, Naples Muni, RNAV RWY 5, Orig
Naples, FL, Naples Muni, GPS RWY 23, Orig–B, CANCELLED
Naples, FL, Naples Muni, RNAV RWY 23, Orig
Augusta, GA, Daniel Field, RADAR–1, Amdt 7
Connersville, IN, Mettel Field, RNAV RWY 18, Orig
Connersville, IN, Mettel Field, RNAV RWY 36, Orig
Brainerd, MN, Brainerd-Crow Wing Co. Regional ILS RWY 23, Amdt 6
Norwood, MA, Norwood Memorial, LOC RWY 35, Amdt 9
Norwood, MA, Norwood Memorial, NDB RWY 35, Amdt 9
Baltimore, MD, Baltimore-Washington Intl, VOR/DME RWY 4, Amdt 3
Baltimore, MD, Baltimore-Washington Intl, VOR RWY 10, Amdt 17
Baltimore, MD, Baltimore-Washington Intl, VOR/DME RWY 15L, Amdt 2
Baltimore, MD, Baltimore-Washington Intl, VOR/DME RWY 22, Amdt 11
Baltimore, MD, Baltimore-Washington Intl, VOR RWY 28, Amdt 24
Baltimore, MD, Baltimore-Washington Intl, VOR/DME RWY 33L, Amdt 3
Baltimore, MD, Baltimore-Washington Intl, VOR/DME–A, Amdt 1, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, ILS/DME RWY 15L, Amdt 4, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, VOR/DME RNAV RWY 22, Amdt 6A, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, ILS/DME RWY 33R, Amdt 2B, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 4, Orig
Baltimore, MD, Baltimore-Washington Intl, GPS RWY 4, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 10, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 15L, Orig
Baltimore, MD, Baltimore-Washington Intl, GPS RWY 15L, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV Y RWY 15R, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV Z RWY 15R, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 22, Orig
Baltimore, MD, Baltimore-Washington Intl, GPS RWY 22, Orig, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, RNAV Y RWY 28, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV Z RWY 28, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 33L, Orig
Baltimore, MD, Baltimore-Washington Intl, RNAV RWY 33R, Orig
Baltimore, MD, Baltimore-Washington Intl, ILS RWY 10, Amdt 18
Baltimore, MD, Baltimore-Washington Intl, ILS RWY 15L, Orig
Baltimore, MD, Baltimore-Washington Intl, ILS RWY 15R, Amdt 15
Baltimore, MD, Baltimore-Washington Intl, ILS RWY 28, Amdt 15
Baltimore, MD, Baltimore-Washington Intl, ILS RWY 33L, Amdt 9
Baltimore, MD, Baltimore-Washington Intl, ILS RWY 33R, Orig
Baltimore, MD, Martin State, VOR/DME OR TACAN RWY 15, Amdt 5, CANCELLED
Baltimore, MD, Martin State, VOR/DME OR TACAN Z RWY 15, Orig
Baltimore, MD, Martin State, LOC RWY 15, Amdt 1
Baltimore, MD, Martin State, NDB RWY 15, Amdt 9
Baltimore, MD, Martin State, NDB RWY 33, Amdt 8
Baltimore, MD, Martin State, ILS RWY 33, Amdt 6
Baltimore, MD, Martin State, VOR/DME RNAV RWY 15, Amdt 5A, CANCELLED
Baltimore, MD, Martin State, RNAV RWY 15, Orig
Baltimore, MD, Martin State, RNAV RWY 33, Orig
Harbor Springs, MI, Harbor Springs, RNAV RWY 10, Orig
Harbor Springs, MI, Harbor Springs, RNAV RWY 28, Orig
Minneapolis, MN, Minneapolic–St. Paul Intl/Wold Chamberlain, ILS RWY 30L, Amdt 43
Minneapolis, MN, Minneapolis–St. Paul Intl/Wold Chamberlain, ILS PRM RWY 30L, Amdt 4 (Simultaneous Close Parallel)
Ithaca, NY, Tompkins County, ILS RWY 32, Amdt 5
Toledo, OH, Metcalf Field, VOR RWY 4, Amdt 9B
Tillamook, OR, Tillamook, RNAV RWY 13, Orig
San Juan, PR, Luis Munoz Marin Intl, GPS RWY 8, Orig–B, CANCELLED
San Juan, PR, Luis Munoz Marin Intl, RNAV RWY 8, Orig
San Juan, PR, Luis Munoz Marin Intl, GPS RWY 10, Orig–A, CANCELLED
San Juan, PR, Luis Munoz Marin Intl, RNAV RWY 10, Orig
Appleton, WI, Outagamie County Regional, LOC BC RWY 21, Amdt 1

[FR Doc. 00–21634 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB54

Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers; Amendments to the Provisions Governing Subordination Agreements Included in the Net Capital of a Futures Commission Merchant or Independent Introducing Broker

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending Regulation 1.17(h), which governs the net capital treatment of subordination agreements. Currently, futures commission merchants (''FCMs'') and independent introducing brokers (''IBIs'') that are members of a self-regulatory organization (''SRO''—*i.e.,* a contract market or the National Futures Association) and that are securities brokers or dealers registered with the Securities and Exchange Commission (''SEC'') are required to obtain the approval of both a futures SRO and a securities designated examining authority (''DEA'') for any proposed subordination agreement, proposed prepayment of a subordinated loan, or proposed reduction in the outstanding principal balance of a secured demand note. The Commission is amending its regulations to permit a futures SRO, subject to the conditions set forth below, to rely on a securities DEA's review and approval of a proposed subordination agreement, a proposed prepayment of a subordinated loan, or a proposed reduction in the outstanding principal balance of a secured demand note submitted to the DEA and SRO by an FCM or IBI.

EFFECTIVE DATE: September 25, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas J. Smith, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; telephone (202) 418–5495;

electronic mail tsmith@cftc.gov; or Henry J. Matecki, Financial Audit and Review Branch, Commodity Futures Trading Commission, 300 S. Riverside Plaza, Room 1600–N, Chicago, IL 60606; telephone (312) 886–3217; electronic mail *hmatecki@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Proposed Rules

On June 2, 2000, the Commission published for comment proposed amendments to Rule 1.17(h), which governs an FCM's or IBI's net capital treatment of subordination agreements.[1] Commission Regulation 1.17 requires FCMs and IBIs to maintain minimum levels of adjusted net capital.[2] In computing adjusted net capital, FCMs and IBIs are permitted to exclude from liabilities funds received which are subordinated to the claims of all general creditors of the FCM or IBI pursuant to a ''satisfactory subordination agreement,'' as defined in Regulation 1.17(h).[3]

Subordination agreements may take the form of either subordinated loan agreements or secured demand notes. Subordinated loan agreements are agreements evidencing a subordinated borrowing of cash by the FCM or IBI. Secured demand notes are agreements evidencing or governing the contribution of a secured demand note to an FCM or IBI and the pledge of securities and/or cash as collateral to secure payment of such note. The outstanding principal balances of a subordinated loan and a secured demand note are recorded as liabilities of an FCM or IBI.[4]

Regulation 1.17(h) sets forth several minimum requirements for the subordination agreements and other conditions that must be met in order for the agreements to qualify as ''satisfactory'' subordination agreements.[5] One condition, set forth in Regulation 1.17(h)(3)(vi), provides that an FCM or IBI may not treat any subordination agreement as a ''satisfactory'' subordination agreement for net capital purposes until the FCM's or the IBI's designated-self regulatory organization (''DSRO''), or the Commission if the FCM or the IBI is not a member of a DSRO, has reviewed the agreement and determined that it satisfies the minimum requirements set forth in Regulation 1.17(h).

Commission regulations also impose restrictions on an FCM's or IBI's ability to make a payment on a subordinated loan prior to the scheduled maturity date of such loan or to effect a full or partial reduction in the outstanding principal balance of a secured demand note. In this regard, Regulation 1.17(h)(2)(vii)(C) requires an FCM or IBI to obtain the written approval of its DSRO, or the Commission if the FCM or IBI is not a member of a SRO, prior to making a prepayment on a subordinated loan or prior to effecting a full or partial reduction in the outstanding principal balance of a secured demand note.

The Commission's regulations governing subordination agreements, including the provisions cited above, are consistent with requirements imposed by the SEC on registered securities brokers or dealers. In this regard, SEC Rule 15c3–1d(c)(6)(i) (17 CFR 240.15c3–1d(c)(6)(i)) is consistent with CFTC Regulation 1.17(h)(3)(vi) in that it requires a registered securities broker or dealer to file copies of any proposed subordination agreement with its DEA prior to the effective date of the agreement.[6] The rule further provides that no subordination agreement shall be deemed a ''satisfactory'' subordination agreement for capital purposes until the DEA has determined that the agreement satisfies the minimum requirements for a satisfactory subordination agreement as set forth in the SEC's rules.[7]

In addition, SEC Rule 15c3–1d(b)(7) (17 CFR 240.15c3–1d(b)(7)) is consistent with CFTC Regulation 1.17(h)(2)(vii)(C) in that it requires a broker or dealer to obtain the written approval of its DEA prior to making a prepayment of a subordinated loan before the scheduled maturity date of the payment and prior to effecting a reduction in the outstanding principal balance of a secured demand note. Therefore, registered FCMs and IBIs that are also registered as securities brokers or dealers with the SEC (hereinafter referred to as ''dually-registered'' FCMs or IBIs) are required to obtain the approvals of a futures market SRO and a securities market DEA prior to excluding subordination agreements from liabilities in computing net capital or prior to making a prepayment on a subordinated loan or effecting a reduction in the outstanding principal balance of a secured demand note.

II. Final Rules

The National Futures Association submitted a letter to the Commission in support of the proposed amendments. This was the only comment received.

After considering the issues, the Commission is amending Regulations 1.17(h)(2)(vii)(C) and 1.17(h)(3)(vi) as proposed. The amendments provide that a DSRO may rely on a DEA's review of a proposed subordination agreement or a request to make a prepayment on a subordinated loan or to reduce the outstanding principal balance of a secured demand note, provided that the dually-registered FCM or IBI files signed copies of the proposals with its applicable DEA, in the manner and form provided by the DEA, prior to the proposed effective dates. The rule also directs the FCM or IBI to file copies of the proposals with its DSRO prior to the respective effective dates and to file copies of the DEA's approval of the transactions with the DSRO immediately upon receipt of such approval.

The requirement that the FCM or IBI file copies of the proposals with its DSRO provides the DSRO with an opportunity to review the transactions to ensure compliance with Commission regulations prior to the effective dates. The amendments further provide that the DEA's review and approval of the proposals is deemed, absent objection

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[1] 65 FR 35304 (June 2, 2000).

[2] Commission regulations cited herein may be found at 17 CFR Ch. I (2000).

Adjusted net capital is generally defined as current assets less liabilities. *See* Regulation 1.17(c)(5).

Regulation 1.17(a)(1)(i) requires FCMs to maintain minimum adjusted net capital of the greatest of: (1) $250,000; (2) four percent of the customer funds required to be segregated and set aside pursuant to the Act and the regulations, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid provided that the deduction for each customer is limited to the amount of customer funds in such customer's account(s); (3) the amount of adjusted net capital required by a registered futures association of which the FCM is a member; or (4) for securities brokers and dealers, the amount of net capital required by SEC Rule 15c3–1(a) (17 CFR 240.15c3–1(a)).

Regulation 1.17(a)(1)(ii) requires IBIs to maintain minimum adjusted net capital of the greatest of: (A) $30,000; (B) the amount of adjusted net capital required by a registered futures associated of which the IBI is a member; or (C) for securities brokers and dealers, the amount of net capital required by SEC Rule 15c3–1(a).

[3] Regulation 1.17(c)(4)(i).

[4] *See* Regulation 1.17(h)(1).

[5] A contract market may impose, or an FCM or IBI may require, conditions or restrictions in addition to those established by the Commission provided that such conditions or restrictions do not cause the subordination agreement to fail to meet the minimum requirements of Regulation 1.17(h).

[6] Rule 15c3–1(c)(12) of the SEC, 17 CFR 240.15c3–1(c)(12), defines DEA as the national securities exchange or the national securities association of which the broker or dealer is a member, or if the broker or dealer is member of more than one such exchange or association, the exchange or association designated by the SEC as the examining authority of the broker or dealer.

[7] The SEC's minimum requirements for a satisfactory subordination agreement are set forth in Rule 15c3–1d(2) (17 CFR 240.15c3–1d(2)) and are comparable to the minimum requirements established by the Commission in Regulation 1.17(h)(2).

by the DSRO, a finding by the DSRO that the proposals meet the minimum requirements and conditions set forth in Commission Regulation 1.17(h). The final responsibility for ensuring that the proposals satisfy the minimum Commission requirements, however, remains with the DSROs.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611, requires that agencies, in adopting rules, consider the impact of those rules on small businesses. The rule amendments discussed herein would affect FCMs and IBIs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.[8]

With respect to IBIs, the Commission stated that it is appropriate to evaluate within the context of a particular rule whether some or all introducing brokers should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.[9] The amendments to Regulations 1.17(h)(2)(vii)(C) and 1.17(h)(3)(vi) do not impose additional requirements on an IBI. Thus, on behalf of the Commission, the Chairman certifies that the proposed rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (Supp. I 1995), imposes certain requirements on federal agencies (including the Commission) to review rules and rule amendments to evaluate the information collection burden that they impose on the public. The Commission believes that the amendments to Regulation 1.17(h) do not impose an information collection burden on the public.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4f, 4g and 8a(5) thereof, 7 U.S.C. 6d, 6g and 12a(5), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

[8] 47 FR 18618, 18619–18620 (April 30, 1982).

[9] 48 FR 35248, 35275–78 (August 3, 1983).

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.17 is amended by revising paragraphs (h)(2)(vii)(C) and (h)(3)(vi) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(h)* * *

(2)* * *

(vii)* * *

(C)(*1*) Notwithstanding the provisions of paragraphs (h)(2)(vii)(A) and (h)(2)(vii)(B) of this section, in the case of an applicant, no prepayment or special prepayment shall occur without the prior written approval of the National Futures Association; in the case of a registrant, no prepayment or special prepayment shall occur without the prior written approval of the designated self-regulatory organization, if any, or of the Commission if the registrant is not a member of a self-regulatory organization.

(*2*) A registrant may make a prepayment or special prepayment without the prior written approval of the designated self-regulatory organization: Provided, That the registrant: Is a securities broker or dealer registered with the Securities and Exchange Commission; files a request to make a prepayment or special prepayment with its applicable securities designated examining authority, as defined in Rule 15c3–1(c)(12) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(12)), in the form and manner prescribed by the designated examining authority; files a copy of the prepayment request or special prepayment request with the designated self-regulatory organization at the time it files such request with the designated examining authority in the form and manner prescribed by the designated self-regulatory organization; and files a copy of the designated examining authority's approval of the prepayment or special prepayment with the designated self-regulatory organization immediately upon receipt of such approval. The approval of the prepayment or special prepayment by the designated examining authority will be deemed approval by the designated self-regulatory organization, unless the designated self-regulatory organization notifies the registrant that the designated examining authority's approval shall not constitute designated self-regulatory organization approval.

(*3*) The designated self-regulatory organization shall immediately provide the Commission with a copy of any notice of approval issued where the requested prepayment or special prepayment will result in the reduction of the registrant's net capital by 20 percent or more or the registrant's excess adjusted net capital by 30 percent or more.

* * * * *

(3) * * *

(vi) *Filing.* An applicant shall file a signed copy of any proposed subordination agreement (including nonconforming subordination agreements) with the National Futures Association at least ten days prior to the proposed effective date of the agreement or at such other time as the National Futures Association for good cause shall accept such filing. A registrant that is not a member of any designated self-regulatory organization shall file two signed copies of any proposed subordination agreement (including nonconforming subordination agreements) with the regional office of the Commission nearest the principal place of business of the registrant (except that a registrant under the jurisdiction of the Commission's Western Regional Office shall file such copies with the Commission's Southwestern Regional Office) at least ten days prior to the proposed effective date of the agreement or at such other time as the Commission for good cause shall accept such filing. A registrant that is a member of a designated self-regulatory organization shall file signed copies of any proposed subordination agreement (including nonconforming subordination agreements) with the designated self-regulatory organization in such quantities and at such time as the designated self-regulatory organization may require prior to the effective date. The applicant or registrant shall also file with said parties a statement setting forth the name and address of the lender, the business relationship of the lender to the applicant or registrant and whether the applicant or registrant carried funds or securities for the lender at or about the time the proposed agreement was so filed. A proposed agreement filed by an applicant with the National Futures Association shall be reviewed by the National Futures Association, and no such agreement shall be a satisfactory subordination agreement for the

purposes of this section unless and until the National Futures Association has found the agreement acceptable and such agreement has become effective in the form found acceptable. A proposed agreement filed by a registrant shall be reviewed by the designated self-regulatory organization with whom such an agreement is required to be filed prior to its becoming effective or, if the registrant is not a member of any designated self-regulatory organization, by the regional office of the Commission where the agreement is required to be filed prior to its becoming effective. No proposed agreement shall be a satisfactory subordination agreement for the purposes of this section unless and until the designated self-regulatory organization or, if a registrant is not a member of any designated self-regulatory organization, the Commission, has found the agreement acceptable and such agreement has become effective in the form found acceptable: Provided, however, That a proposed agreement shall be a satisfactory subordination agreement for purpose of this section if the registrant: is a securities broker or dealer registered with the Securities and Exchange Commission; files signed copies of the proposed subordination agreement with the applicable securities designated examining authority, as defined in Rule 15c3–1(c)(12) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(12)), in the form and manner prescribed by the designated examining authority; files signed copies of the proposed subordination agreement with the designated self-regulatory organization at the time it files such copies with the designated examining authority in the form and manner prescribed by the designated self-regulatory organization; and files a copy of the designated examining authority's approval of the proposed subordination agreement with the designated self-regulatory organization immediately upon receipt of such approval. The designated examining authority's determination that the proposed subordination agreement satisfies the requirements for a satisfactory subordination agreement will be deemed a like finding by the designated self-regulatory organization, unless the designated self-regulatory organization notifies the registrant that the designated examining authority's determination shall not constitute a like finding by the designated self-regulatory organization.

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Issued in Washington D.C. on August 17, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–21498 Filed 8–23–00; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 811

[Docket No. 99N–4955]

Amendment of Various Device Regulations to Reflect Current American Society for Testing and Materials Citations, Confirmation in Part and Technical Amendment; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that appeared in the **Federal Register** of July 18, 2000 (65 FR 44435). The document confirmed, in part, the direct final rule amending certain references in various medical devices regulations. The document was published with an incorrect **Federal Register** page reference. This document corrects that error.

DATES: Effective August 24, 2000.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 00–18082 appearing on page 44435 in the **Federal Register** of Tuesday, July 18, 2000, the following correction is made:

1. On page 44435, in the 2d column, under the **DATES** and the **SUPPLEMENTARY INFORMATION** captions, the phrase ''January 24, 2000 (65 FR 3627)'' is corrected to read ''January 24, 2000 (65 FR 3584)''.

Dated: August 15, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–21562 Filed 8–23–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1270

[Docket No. NHTSA–99–4493]

RIN 2127–AH41

Open Container Laws

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, the regulations that were published in an interim final rule to implement a new program established by the Transportation Equity Act for the 21st Century (TEA 21) Restoration Act. The final rule provides for a transfer of Federal-aid highway construction funds authorized under 23 U.S.C. 104 to the State and Community Highway Safety Program under 23 U.S.C. 402 for any State that fails to enact and enforce a conforming ''open container'' law.

DATES: This final rule becomes effective on August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn Karr, Office of State and Community Services, NSC–01, telephone (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30, telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION: The Transportation Equity Act for the 21st Century (TEA 21), Pub. L. 105–178, was signed into law on June 9, 1998. On July 22, 1998, the TEA 21 Restoration Act, Pub. L. 105–206, was enacted to restore provisions that had been agreed to by the conferees on TEA 21, but had not been included in the TEA 21 conference report. Section 1405 of the Act amended Chapter 1 of Title 23, United States Code, by adding Section 154, which established a program to transfer a percentage of a State's Federal-aid highway construction funds to the State's apportionment under section 402 of Title 23 of the United States Code, if the State fails to enact and enforce a conforming ''open container'' law that prohibits the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway, or the right-of-way of a public highway, in the State.

In accordance with section 154, the transferred funds are to be used for alcohol-impaired driving countermeasures or the enforcement of driving while intoxicated (DWI) laws. States may elect instead to use all or a portion of the funds for hazard elimination activities, under 23 U.S.C. Section 152.

Background

The Problem of Impaired Driving

Injuries caused by motor vehicle traffic crashes are the leading cause of death in America for people aged 5 to 29. Each year, traffic crashes in the United States claim approximately 41,000 lives and cost Americans an estimated $150 billion, including $19 billion in medical and emergency expenses, $42 billion in lost productivity, $52 billion in property damage, and $37 billion in other crash-related costs. In 1998, alcohol was involved in approximately 39 percent of fatal traffic crashes. Every 33 minutes, someone in this country dies in an alcohol-related crash. Impaired driving is the most frequently committed violent crime in America.

Open Container Law Incentives

State open container laws can serve as an important tool in the fight against impaired driving. To encourage States to enact and enforce effective impaired driving measures (including open container laws), Congress enacted 23 U.S.C. Section 410 (the Section 410 program) in 1988. Under this program, States could qualify for supplemental grant funds if they qualified for a basic Section 410 grant and had an open container law that met certain requirements.

TEA 21 changed the Section 410 program and removed the open container incentive grant criterion. The conferees to that legislation had intended to create a new open container transfer program to encourage States to enact open container laws, but this new program was inadvertently omitted from the TEA 21 conference report. The program was included instead in the TEA 21 Restoration Act, which was signed into law on July 22, 1998.

Section 154 Open Container Law Program

Section 154 provides that the Secretary must transfer a portion of a State's Federal-aid highway funds apportioned under sections 104(b)(1), (3), and (4) of title 23 of the United States Code, for the National Highway System, Surface Transportation Program and Interstate System, to the State's apportionment under section 402 of that title, if the State fails to enact and enforce a conforming ''open container'' law. If a State does not meet the statutory requirements on October 1, 2000 or October 1, 2001, an amount equal to one and one-half percent of the funds apportioned to the State will be transferred. If a State does not meet the statutory requirements on October 1, 2002, an amount equal to three percent of the funds apportioned to the State will be transferred. An amount equal to three percent will continue to be transferred on October 1 of each subsequent fiscal year, if the State does not meet the requirements on those dates.

To avoid the transfer of funds a State must enact and enforce a law that prohibits the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.

Interim Final Rule

On October 6 1998, NHTSA and the FHWA published an interim final rule in the **Federal Register** to implement the Section 154 program (63 FR 53580). The interim final rule provided that, to avoid the transfer of funds, a State must have a law that has been enacted and made effective, and must be actively enforcing the law. In addition, the law must meet certain basic elements.

Compliance Criteria

To avoid a transfer of funds under the interim final rule, a State must meet the following basic elements:

1. Prohibits Possession of Any Open Alcoholic Beverage Container and the Consumption of Any Alcoholic Beverage

The law must prohibit the possession of any open alcoholic beverage container in the passenger area of any motor vehicle that is located on a public highway or right-of-way. The law must also prohibit the consumption of any alcoholic beverage in the passenger area of any motor vehicle that is located on a public highway or right-of-way.

2. In the Passenger Area of Any Motor Vehicle

The law must apply whenever such activity is taking place in the passenger area of any motor vehicle, consistent with the definitions of ''motor vehicle'' and ''passenger area'' that are included in § 1270.3 of the regulation.

3. All Alcoholic Beverages

The law must apply to all ''alcoholic beverages.''

4. Applies to All Occupants

The law must apply to all occupants of the motor vehicle, including the driver and all passengers.

5. Located on a Public Highway or the Right-of-Way of a Public Highway

The law must apply to a motor vehicle while it is located anywhere on a public highway or the right-of-way of a public highway.

6. Primary Enforcement

The State must provide for primary enforcement of its law. Under a primary enforcement law, law enforcement officials have the authority to enforce the law without, for example, the need to show that they had probable cause to believe that another violation had been committed. A law that provides for secondary enforcement will not conform to the requirements of the regulation.

A more detailed discussion of the six elements described above is contained in the interim final rule (63 FR 53580–586).

Demonstrating Compliance

Section 154 provides that nonconforming States will be subject to the transfer of funds beginning in fiscal year 2001. To avoid the transfer, the interim final rule provided that each State must submit a certification by an appropriate State official that the State has enacted and is enforcing an open container law that conforms to 23 U.S.C. 154 and part 1270. A more detailed discussion regarding the certifications is contained in the interim final rule (63 FR 53583).

Enforcement

Section 154 provides that a State must not only enact a conforming law, but must also enforce the law. In the interim final rule, the agencies encouraged the States to enforce their open container laws rigorously. In particular, the agencies recommended that States incorporate into their enforcement efforts activities designed to inform law enforcement officers, prosecutors, members of the judiciary and the public about their open container laws. States should also take steps to integrate their open container enforcement efforts into their enforcement of other impaired driving laws.

To demonstrate that they are enforcing their laws under the regulation, however, the interim rule indicated that States are required only

to submit a certification that they are enforcing their laws.

Notification of Compliance

The interim final rule provided that for each fiscal year, beginning with FY 2001, NHTSA and the FHWA will notify States of their compliance or noncompliance with section 154, based on a review of certifications received. If, by June 30 of any year, beginning with the year 2000, a State has not been determined by the agencies, based on the State's laws and a conforming certification, to comply with section 154 and the implementing regulation, the agencies will make an initial determination that the State does not comply with section 154, and the transfer of funds will be noted in the FHWA's advance notice of apportionment for the following fiscal year, which generally is issued in July.

Each State determined to be in noncompliance will have until September 30 to rebut the initial determination or to come into compliance. The State will be notified of the agencies' final determination of compliance or noncompliance and the amount of funds to be transferred as part of the certification of apportionments, which normally occurs on October 1 of each fiscal year.

Request for Comments

The agencies requested comments from interested persons on the interim final rule. The agencies stated in the interim final rule that all comments submitted would be considered and that following the close of the comment period, the agencies would publish a document in the **Federal Register** responding to the comments and, if appropriate, would make revisions to the provisions of part 1270.

Comments Received

The agencies received submissions from six commenters in response to the interim final rule. Comments were received from: Betty J. Mercer, Division Director, Office of Highway Safety Planning, Michigan Department of State Police and James R. DeSana, Director, Michigan Department of Transportation (Michigan); Henry M. Jasny, General Counsel for Advocates for Highway and Auto Safety (Advocates); Carl D. Tubbesing, Deputy Executive Chair, National Conference of State Legislatures (NCSL); Tricia Roberts, Director of the Delaware Office of Highway Safety, Brian J. Bushweller, Secretary, Delaware Department of Public Safety and Ann P. Canby, Secretary, Delaware Department of Transportation (Delaware); K. Craig Allred, Director, Utah Highway Safety Office and Chair, National Association of Governors' Highway Safety Representatives (NAGHSR); and Peter M. Thompson, Coordinator, State of New Hampshire, Office of the Governor, Highway Safety Agency (New Hampshire). The comments, and the agencies' responses to them, are discussed in detail below. Also discussed below are certain changes that the agencies decided to make in this final rule regarding issues that were raised during NHTSA's review of State laws and proposed legislation pursuant to the interim final rule.

1. General Comments

In general, the comments in response to the interim final rule were positive. Advocates strongly supported the compliance requirements, citing studies that show ''that possession of open containers of alcoholic beverages in the passenger compartment of motor vehicles is associated with an [unexpectedly] high percentage of motor vehicle crashes, even if the driver of the vehicle has not been shown to have consumed any alcohol.''

Michigan and Delaware indicated that they opposed penalties applied to transportation funding for non-compliance with requirements such as section 154. NCSL stated that ''a one-size-fits-all approach is not the best way to tackle the nation's drunk driving problem.''

Most comments related to the specific requirements that State open container laws must meet to avoid a transfer of funds. These comments and the agencies' responses to them are discussed in greater detail below.

2. Comments Regarding the Definition of Open Container

Section 154 defined the term ''open alcoholic beverage container'' to mean any bottle, can, or other receptacle that:

(1) Contains any amount of alcoholic beverage; and

(2)(i) Is open or has a broken seal; or

(ii) The contents of which are partially removed.

The agencies adopted this definition in the interim final rule.

NAGHSR argued that the agencies' definition was too broad. It commented that the agencies' definition ''prohibits an open container even when such container carries only trace amounts of an alcoholic beverage.'' It recommended that the definition be changed ''to one which prohibits an open container with any usable or consumable amount of alcohol.''

As indicated above, the definition of ''open container'' was specifically included in the statute and the agencies are not at liberty to change it in the absence of an amendment to the legislation. Accordingly, this portion of the interim regulation has been adopted without change.

3. Comments Regarding the Possession and Consumption Requirement

Section 154 provides that a State must enact and enforce:

a law that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage.

The interim final rule provided that the State's open container law must prohibit both the possession of any open alcoholic beverage container and the consumption of any alcoholic beverage in the passenger area of any motor vehicle.

NAGHSR disagreed with the agencies' decision to require open container laws to cover both possession and consumption and argued that under the statutory language, laws may prohibit either possession or consumption. NAGHSR stated that the agencies have ''interpreted the federal statutory language too expansively and not in a manner consistent with Congressional intent.'' NAGHSR commented also that ''there is nothing in the legislative history of the open container provision to support a requirement that both possession and consumption should be prohibited.''

By contrast, Advocates expressed support for the possession and consumption requirement. It indicated that ''we concur with the agencies that the statute requires that State open container laws must prohibit both 'the possession of any open alcoholic container' and 'must also prohibit the consumption of any alcoholic beverage in the passenger area of any motor vehicle'* * *. There is no other plausible way to read the statutory language.''

NCSL expressed its concern that many State laws do not cover both possession and consumption. It stated that ''sixteen state laws currently prohibit consumption but not possession. It is unlikely that states could change the laws to reflect the requirement in time to avoid the 1½ % redirection penalty in either the first or second year.''

New Hampshire noted that its law prohibited possession of an open container but did not specifically prohibit consumption of an alcoholic beverage. It stated that ''in order to consume an alcoholic beverage, an individual must first have that beverage in their possession. Why is it necessary

to complicate the language by requiring that both 'possession' and 'consumption' be included in the law when simply possessing alcohol in an open container in the passenger area is sufficient.''

The agencies do not believe that they have interpreted the statutory language too broadly or in a manner inconsistent with Congressional intent. The statutory language requires that State laws must penalize an individual for either possessing an open container or consuming an alcoholic beverage in the passenger area of a motor vehicle. In other words, State laws must prohibit both activities independently. NHTSA has interpreted this language consistently since 1990, when it issued regulations implementing the Section 410 program, under which States could qualify for a supplemental grant by adopting laws that prohibited both the possession of an open container and the consumption of alcoholic beverages. There is nothing in the legislative history of section 154 that would suggest that Congress intended that this interpretation should change. For these reasons, this portion of the interim regulation has been adopted without change.

With respect to New Hampshire's assertion that open container laws that prohibit possession need not specifically prohibit consumption, the agencies agree with this view. We note that, during NHTSA's review of State laws and proposed legislation, when presented with provisions that prohibit possession of any open container, it has determined that these provisions necessarily also prohibit consumption of alcoholic beverages because it is not possible to consume an alcoholic beverage without also possessing it. Accordingly, State laws and proposed legislation that prohibit possession have been found to be in compliance with the possession and consumption criterion.

4. Comments Regarding the Passenger Area of Any Motor Vehicle Requirement

The term ''passenger area'' was defined in the interim final rule to mean ''the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment.'' Delaware commented that ''the prohibition of the entire ''passenger area'' is not justified.'' It stated that ''the intent is to prohibit the driver from driving under the influence. Passenger area of the vehicle needs to be less stringent with a focus on the driver.''

The statutory language specifically provides that open container laws must prohibit possession and consumption in the passenger area of any motor vehicle and the agencies are not at liberty to change this requirement in the absence of an amendment to the legislation. Moreover, there is nothing in the legislative history that suggests that the purpose of the Section 154 program was focused solely on preventing a driver from possessing alcoholic beverages. Congress enacted other programs in TEA 21 and in the TEA 21 Restoration Act, such as the Section 410 and 164 programs, that are limited to drivers, but did not enact such a limitation in section 154. Accordingly, the agencies will not change this element of the requirement in the final rule.

The interim regulations permitted some exceptions to the ''passenger area of any motor vehicle'' requirement. Specifically, they provided that State laws that contained exceptions allowing open containers behind the last upright seat or in an area not normally occupied by the driver and passengers in a vehicle not equipped with a trunk or in locked glove compartments would be permitted under section 154.

Advocates argued that the agencies should not permit exceptions allowing open containers to be kept behind the last upright seat or in an area not normally occupied by the driver or passengers in a vehicle not equipped with a trunk. It stated that ''the agencies provide no basis for allowing this practice'' and that ''the express language of the statute does not permit the agencies to entertain an exception in state open container laws for vehicles that are not equipped with a trunk.'' Arguing that the only permissible exceptions to the ''passenger area of any motor vehicle'' requirement were specifically identified in the statute, Advocates asserted that ''the agencies are not at liberty to enlarge the scope of the exceptions determined by Congress' and that ''the statute does not provide any statement that vehicles that are not equipped with trunks can be excepted and, therefore, the agencies have no authority to permit this practice.''

As the agencies noted in the interim final rule, prior to the issuance of that document, the agencies had reviewed existing State open container laws to determine whether they contained any exceptions. We determined that a number of States prohibit occupants from possessing open alcoholic beverage containers in motor vehicles, but provide for an exception when the vehicle is not equipped with a trunk. Specifically, these States do not consider it to be an offense to keep an open alcoholic beverage container behind the last upright seat of such vehicles or in an area of such vehicles not normally occupied by the driver or passengers.

Although the section 154 statute did not specifically provide for such an exception, the agencies did not believe it was Congress' intent that the statute be read so literally as to penalize every State whose laws contained any exceptions at all. Accordingly, the agencies considered whether this exception should be permitted under the regulations. Specifically, we considered whether this particular exception would render the underlying open container requirement unenforceable, so that it would undermine or be wholly inconsistent with the purpose of the statute.

In the agencies' view, an exception that permits open containers behind the last upright seat or in an area not normally occupied by the driver or passengers in vehicles not equipped with a trunk, addresses a legitimate need for storage. In addition, we believe this exception would not undermine the purpose of open container laws or render them unenforceable, because it would permit open containers only in the least accessible place in a vehicle. We continue to believe that such exceptions should be permitted.

Advocates noted that the agencies declined to permit exceptions allowing open containers in an unlocked glove compartment and stated that ''we fail to see the distinction between the use of a glove compartment or the area behind a seat.'' As indicated above, the agencies believe that the area behind the last upright seat of a vehicle is the area that is least accessible to the driver or passengers in a vehicle. By contrast, we believe that an unlocked glove compartment is readily accessible to the driver and passengers. We decided to permit exceptions for open containers in a locked glove compartment because the requirement that the glove compartment be locked makes the open container significantly less accessible.

Accordingly, the agencies do not believe that it is necessary to change the interim regulation in response to these comments.

5. Comments Regarding the All Occupants Requirement

The interim rule indicated that a State's law would be deemed to be in compliance with the all occupants requirement if it prohibits the possession of any open alcoholic beverage container by the driver, but permits possession of alcohol by passengers in ''the passenger area of a

motor vehicle designed, maintained or used primarily for the transportation of persons for compensation'' (such as buses, taxis and limousines) and those ''in the living quarters of a house coach or house trailer.''

The agencies received three comments indicating that the interim final rule was unclear as to whether this exception for passengers in house coaches or house trailers is broad enough to cover passengers in recreational vehicles (RVs).

The agencies consider the exception for house coaches and house trailers to be broad enough to cover recreational vehicles. We believe that the purpose of the exception was to allow passengers in vehicles which have living quarters to possess open containers in that area. House coaches, house trailers and recreational vehicles all have a living quarters area and, accordingly, we believe that passengers in the living quarters of recreational vehicles should be permitted to possess open containers. During NHTSA's review of State laws and proposed legislation, it has determined that laws which permit possession and consumption by passengers in the living quarters of recreational vehicles comply with the all occupants requirement.

Accordingly, the agencies do not believe that it is necessary to change the interim regulation in response to these comments.

6. Comments Regarding the Public Highway or Right-of-Way Requirement

Three comments addressed the requirement that a State's open container law must apply to a motor vehicle while it is located anywhere on a public highway or the right-of-way of a public highway. In the interim final rule, the agencies defined ''public highway or the right-of-way of a public highway'' to mean ''the entire width between and immediately adjacent to the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.''

The comments suggested that the agencies' definition of ''public highway or the right-of-way of a public highway'' was too broad. NAGHSR suggested that, under the definition of right-of-way in the interim final rule, ''picnics and other activities involving a stopped vehicle in a roadside park or other public area adjacent to a roadway would all be prohibited if alcohol were consumed.'' NAGHSR suggested also that ''a person in a parked vehicle at a public rest area along a major Interstate would be in violation of the law if he or she consumed an alcoholic beverage'' and that ''similar activities could be prohibited in parked vehicles in public parking lots adjacent to roadways or public roadways that have been blocked off under local permit.'' NAGHSR concluded that ''there is no legislative history to support such a broad interpretation of the statute'' and recommended that ''the definition of public right-of-way should be limited only to the entire width of the roadway including the shoulders, and that possession or consumption in a stopped vehicle should be prohibited only within that area.''

NCSL and Delaware asserted that the right-of-way requirement is not justified because it does not involve any impaired driving on a right-of-way. NCSL and Delaware asserted also that, under the interim final rule, picnics and tailgate parties would be prohibited and that the regulations would even prohibit a tailgate party where there was a designated driver. By contrast, Advocates supported the right-of-way requirement.

The requirement that open container laws apply to a vehicle located on public highway or on the right-of-way of a public highway was specifically included in the statute. The agencies believe that this provision ensures that an individual cannot pull off a highway, drink, and get back on the highway and drive impaired. There is nothing in the legislative history of section 154 to suggest that the purpose of section 154 was limited to preventing a driver from possessing or consuming an alcoholic beverage only while driving.

During NHTSA's review of State laws and proposed legislation, it has indicated that we intend the ''right-of-way'' requirement to apply to shoulders. While State laws may reach beyond the Federal requirements, NHTSA has determined that if a State law covers the public highway and the shoulder alongside of it, that is sufficient to meet this element of the open container requirements. To clarify the agency's position, we have changed the definition of the term ''public highway or right-of-way of a public highway'' to reflect this determination.

7. Comments Regarding the Timing of Certifications

The interim final rule provided that, to avoid a transfer of funds in FY 2001, the agencies must receive a State's certification no later than September 30, 2000, and the certification must indicate that the State ''has enacted and is enforcing an open container law that conforms to 23 U.S.C. 154 and (the agencies' implementing regulations).'' The interim rule indicated that States found in noncompliance with the requirements in any fiscal year, once they enacted complying legislation and are enforcing the law, must submit a certification to that effect before the following fiscal year to avoid a transfer of funds in that following fiscal year. The interim rule indicated that such certifications must be submitted by October 1 of the following fiscal year.

To avoid confusion, the agencies believe that States should be required to submit their certifications by the same date in any fiscal year. Accordingly, the agencies have determined that, to avoid a transfer of funds in FY 2001 or in any subsequent fiscal year, States will be required to submit certifications by September 30.

The agencies realize that a State could enact a conforming law by September 30, and the law could become effective on October 1 of the following fiscal year. Accordingly, the agencies have decided to amend the regulations to enable such States to avoid a transfer of funds in the year in which the State's new law becomes effective. To avoid a transfer of funds, they may certify that the State has enacted an open container law that conforms to 23 U.S.C. 154 and the agencies' implementing regulations and that will become effective and be enforced by October 1 of the following fiscal year.

We note that, since the issuance of the interim final rule, NHTSA has reviewed certifications from several States that have not been complete. States must include citations to all applicable provisions of their law including, for example, citations to the definition of alcoholic beverage and other sections of their statute, as well as regulations or case law, as applicable.

8. Comments Regarding the Transfer of Funds

As explained in the interim final rule, Section 154 provides that the Secretary must transfer a portion of a State's Federal-aid highway funds apportioned under sections 104(b)(1), (3), and (4) of Title 23 of the United States Code, for the National Highway System, Surface Transportation Program and Interstate System, to the State's apportionment under section 402 of that title, if the State does not meet certain statutory requirements.

The interim rule indicated that, in accordance with the statute, the amount to be transferred from a non-conforming State will be calculated based on a percentage of the funds apportioned to the State under each of sections 104(b)(1), (3) and (4). However, the actual transfers need not be drawn evenly from these three sources. The

transferred funds may come from any one or a combination of the apportionments under section 104(b)(1), (3) and (4), as long as the total amount meets the statutory requirement.

One commenter noted that the interim rule did not specify which State agency has authority to decide from which category funds should be transferred. The agencies believe that, because the decision concerning which of the three highway apportionments should lose funds solely affects State Department of Transportation (DOT) programs, the DOT should have authority to inform the FHWA of any changes in distribution. The agencies have added language to the final rule, in the section on Transfer of Funds, indicating that on October 1, the FHWA will make the transfers based on a proportionate amount, then the State's Department of Transportation will be given until October 30 to notify the FHWA if they would like to change the distribution among sections 104(b)(1), (3) and (4).

The interim rule indicated that the funds transferred to section 402 could be used for alcohol-impaired driving countermeasures or directed to State and local law enforcement agencies for the enforcement of laws prohibiting driving while intoxicated, driving under the influence or other related laws or regulations. In addition, the interim final rule indicated that States may elect to use all or a portion of the transferred funds for hazard elimination activities under 23 U.S.C. 152.

Four commenters noted that the interim final rule did not specify which State agency has the authority to determine how transferred funds should be used. NAGHSR stated that ''it is unclear whether these decisions are state department of transportation decisions, state highway safety office decisions, or both.'' Michigan suggested that ''it should be made clear that all affected state agencies are to participate, and that States' decisions may be guided by the traffic-safety benefit returned by the investment.''

The agencies have determined that all of the affected State agencies should participate in deciding how transferred funds should be directed. Accordingly, the agencies have added language to the section on Use of Transferred Funds specifying that both the State DOT, which will ''lose'' the funds, and the State Highway Safety Office (SHSO), which will ''gain'' the funds must jointly decide.

The State DOT and SHSO officials will provide written notification of their funding decisions to the agencies, within 60 days of the transfer, identifying the amounts of apportioned funds to be obligated to alcohol-impaired driving programs, hazard elimination programs, and related planning and administration costs allowable under section 402. This process will permit account entries to be made. Joint decision making by the DOT and SHSO is the same process required by NHTSA and FHWA for other TEA 21 programs in which Congress authorized flexible highway safety/highway construction funding choices—the Section 157 Seat Belt Use Incentive Grant program and the Section 153 .08 BAC Law Incentive program.

Regulatory Analyses and Notices

Executive Order 12988 (Civil Justice Reform)

This final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agencies have determined that this action is not a significant action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. States can choose to enact and enforce an open container law, in conformance with Pub. L. 105–206, and thereby avoid a transfer of Federal-aid highway construction funds. Alternatively, if States choose not to enact and enforce a conforming law, their funds will be transferred, but not withheld. Accordingly, the amount of funds provided to each State will not change.

In addition, the costs associated with this rule are minimal and are expected to be offset by resulting highway safety benefits. The enactment and enforcement of open container laws should help to reduce impaired driving, which is a serious and costly problem in the United States. Accordingly, further economic assessment is not necessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this action on small entities. This rulemaking implements a new program enacted by Congress in the TEA 21 Restoration Act. As the result of this new Federal program, and the implementing regulation, States will be subject to a transfer of funds if they do not enact and enforce laws prohibiting the possession of open alcoholic beverage containers and the consumption of alcoholic beverages. This final rule will affect only State governments, which are not considered to be small entities as that term is defined by the Regulatory Flexibility Act. Thus, we certify that this action will not have a significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR part 1320.

National Environmental Policy Act

The agencies have analyzed this action for the purpose of the National Environmental Policy Act, and have determined that it will not have a significant effect on the human environment.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other affects of final rules that include a Federal mandate likely to result in the expenditure by the State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. In the interim final rule, the agencies indicated that the Section 154 program did not meet the definition of a Federal mandate, because the resulting annual expenditures were not expected to exceed the $100 million and because the States were not required to enact and enforce a conforming open container law.

NCSL asserted that the rule will result in an unfunded mandate. It stated that ''the total cost to the states to enforce these open container laws will exceed one hundred million dollars in cost. Even the sixteen states that currently have open container laws that prohibit the consumption of alcoholic beverages will now have to have primary enforcement of an open container law with simple possession as a violation.'' NCSL noted that the UMRA requires agencies to prepare a written assessment of the anticipated costs and benefits of any unfunded Federal mandate and that NHTSA failed to do so. NCSL asserted also that NHTSA failed to consult with

State officials to determine the financial and political ramifications of this regulatory proposal.

The agencies do not believe that the rule will result in an unfunded mandate because the Section 154 program is optional to the States. States may choose to enact and enforce a conforming open container law and avoid the transfer of funds altogether. Alternatively, if States choose not to enact and enforce a conforming law, funds will be transferred, but no funds will be withheld from any State. Moreover, the agencies do not believe that the resulting cost to States from implementing conforming laws will be over $100 million. Prior to the passage of TEA 21, many States already had enacted and were enforcing open container laws. Some of these States have amended their laws to conform to the new Section 154 requirements, but such changes will not result in expenditures of over $100 million. For States that did not previously have open container laws, the cost to enact such laws will be minimal. There may be some costs to provide training to law enforcement or other officials or to educate the public about these changes, but these costs are not likely to be significant.

In the interim final rule, the agencies recommended that States incorporate into their enforcement efforts activities designed to inform law enforcement officers, prosecutors, members of the judiciary and the public about their open container laws. In addition, the agencies advised States to take steps to integrate their open container enforcement efforts into their enforcement of other impaired driving laws. If States take these steps, the cost to enforce such laws would likely be absorbed into the State's overall law enforcement budget because the States would not be required to conduct separate enforcement efforts to enforce open container laws.

Accordingly, the agencies do not believe that it is necessary to prepare a written assessment of the costs and benefits, or other effects of the rule.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Accordingly, a Federalism Assessment has not been prepared.

List of Subjects in 23 CFR Part 1270

Alcohol and alcoholic beverages, Grant programs—Transportation, Highway Safety.

In consideration of the foregoing, the interim final rule published in the **Federal Register** of October 6, 1998, 63 FR 53580, is adopted as final, with the following changes:

SUBCHAPTER D—TRANSFER AND SANCTION PROGRAMS

PART 1270—OPEN CONTAINER LAWS

1. The authority citation for part 1270 continues to read as follows:

Authority: 23 U.S.C. 154; delegation of authority at 49 CFR 1.48 and 1.50.

§ 1270.3 [Amended]

2. Section 1270.3 is amended by revising paragraph (f) to read as follows:

* * * * *

(f) *Public highway or right-of-way of a public highway* means the width between and immediately adjacent to the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel; inclusion of the roadway and shoulders is sufficient.

* * * * *

3. Section 1270.5 is amended by revising paragraph (b) to read as follows:

§ 1270.5 Certification Requirements.

(a) * * *

(b) The certification shall be made by an appropriate State official, and it shall provide that the State has enacted and is enforcing an open container law that conforms to 23 U.S.C. 154 and § 1270.4 of this part.

(1) If the State's open container law is currently in effect and is being enforced, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing a open container law that conforms to the requirements of 23 U.S.C. 154 and 23 CFR 1270.4, (citations to pertinent State statutes, regulations, case law or other binding legal requirements, including definitions, as needed).

(2) If the State's open container law is not currently in effect, but will become effective and be enforced by October 1 of the following fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted an open container law that conforms to the requirements of 23 U.S.C. 154 and 23 CFR 1270.4, (citations to pertinent State statutes, regulations, case law or other binding legal requirements, including definitions, as needed), and will become effective and be enforced as of (effective date of the law).

* * * * *

4. Section 1270.6 is amended by adding paragraph (c) to read as follows:

§ 1270.6 Transfer of Funds.

* * * * *

(c) On October 1, the transfers to Section 402 apportionments will be made based on proportionate amounts from each of the apportionments under Sections 104(b)(1), (b)(3) and (b)(4). Then the State's Department of Transportation will be given until October 30 to notify FHWA, through the appropriate Division Administrator, if they would like to change the distribution among Section 104(b)(1), (b)(3) and (b)(4).

5. Section 1270.7 is amended by redesignating paragraphs (c) through (f) as paragraphs (d) through (g) and by a adding new paragraph (c) to read as follows:

§ 1270.7 Use of Transferred Funds.

* * * * *

(c) No later than 60 days after the funds are transferred under § 1270.6, the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State shall jointly identify, in writing to the appropriate NHTSA Administrator and FHWA Division Administrator, how the funds will be programmed among alcohol-impaired driving programs, hazard elimination programs and planning and administration costs.

* * * * *

Issued on: August 16, 2000.

Anthony R. Kane,

Executive Director, Federal Highway Administration.

L. Robert Shelton,

Executive Director, National Highway Traffic Safety Administration.

[FR Doc. 00–21564 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–205]

Drawbridge Operation Regulations: Harlem River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Third Avenue Bridge, at mile 1.9, across the Harlem River in New York City. This deviation from the regulations allows the bridge owner to require at least a 48 hour advance notice for openings from 10 a.m. to 5 p.m., daily, from August 4, 2000 through September 17, 2000. This action is necessary to facilitate manual operation of the bridge and electrical repairs at the bridge.

DATES: This deviation is effective August 4, 2000, through September 17, 2000.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Third Avenue Bridge, at mile 1.9, across the Harlem River has a vertical clearance of 25 feet at mean high water, and 30 feet at mean low water in the closed position.

The existing operating regulations in 33 CFR 117.789(a) require the bridge to open on signal from 10 a.m. to 5 p.m., daily.

The bridge owner, the New York City Department of Transportation, requested a temporary deviation from the drawbridge operating regulations because the electrical operating system for the Third Avenue Bridge has failed and the bridge can be opened only by manual operation. The bridge owner needs at least a 48 hour advance notice to facilitate the mobilization of equipment and personnel to open the bridge manually during the time period the electrical operating system is being repaired.

This deviation to the operating regulations allows the owner of the Third Avenue Bridge to require at least a 48 hour advance notice for openings, 10 a.m. to 5 p.m., August 4, 2000 through September 17, 2000. Vessels that can pass under the bridge without an opening may do so at all times.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 15, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 00–21567 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD05–00–035]

RIN 2115–AA97

Safety Zone; Chesapeake Bay, Hampton, VA.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the 1812 Overture Fireworks display to be held on a deck barge in Chesapeake Bay, adjacent to Fort Monroe, Hampton, Virginia. This action is intended to restrict vessel traffic on Chesapeake Bay, within a 1000-foot radius of a fireworks laden barge. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

DATES: This temporary final rule is effective from 8 p.m. until 9 p.m. on August 24, 2000.

ADDRESSES: USCG Marine Safety Office Hampton Roads maintains the public docket for this rulemaking. Documents indicated in this preamble as being available in this docket, will become part of this docket and will be available for inspection or copying at the Marine Safety Office, 200 Granby St., Norfolk, VA, 23510 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Roddy Corr, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3290.

SUPPLEMENTARY INFORMATION:

Regulatory History

A Notice of Proposed Rulemaking (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553, the Coast Guard finds that good cause exists for not publishing a NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. The Coast Guard received confirmation of this request for a temporary safety zone on July 6, 2000. There was insufficient time to publish a proposed rule in advance of the event. Publishing an NPRM and delaying the effective date of the regulation would be contrary to the public interest, because immediate action is necessary to protect the vessels and spectators from the hazards associated with the fireworks display.

Background and Purpose

The Coast Guard is establishing a temporary safety zone for the 1812 Overture Fireworks Display to be held on a deck barge in Chesapeake Bay adjacent to Fort Monroe, Hampton, Virginia. The safety zone will restrict vessel traffic on a portion of the Chesapeake Bay, within a 1000-foot radius of the fireworks deck barge, located in approximate position 37°00′03″N, 076°18′26″W (NAD 1983). The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

The safety zone is effective from 8 p.m. until 9 p.m. on August 24, 2000. Entry into this safety zone is prohibited unless authorized by the Captain of the Port Hampton Roads. Public notifications will be made prior to the event via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

This temporary final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, l979).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This temporary final rule will only affect a limited area for one hour and only affects the waters of Chesapeake Bay adjacent to Fort Monroe within a 1000-foot radius of the fireworks deck barge. Alternative routes exist for maritime traffic, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid the safety zones.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and

governmental jurisdictions with populations of less than 50,000.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This regulation will be in effect for one hour and only affects the waters of the Chesapeake Bay adjacent to Fort Monroe within a 1000-foot radius of the fireworks deck barge, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid entering the safety zone.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. No requests for assistance in understanding this rule were received.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. § 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T05–035 to read as follows:

§ 165.T05–035 Safety Zone; Chesapeake Bay, Hampton, VA.

(a) *Location.* The following area is a safety zone: All waters of the Chesapeake Bay within a 1000-foot radius of a fireworks laden barge in approximate position 37°00′03″N, 076°18′26″W.

(b) *Captain of the Port.* Captain of the Port means the Commanding Officer of the Marine Safety Office Hampton Roads, Norfolk, VA or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on his behalf.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones found in § 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through a safety zone must first request authorization from the Captain of the Port. The Captain of the Port's representative enforcing the safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (757) 484–8192.

(3) The Captain of the Port will notify the public of changes in the status of this safety zone by marine information broadcast on VHF marine band radio, channel 22 (157.1 MHz).

(d) *Effective dates.* This section will be effective from 8 p.m. until 9 p.m. on August 24, 2000.

Dated: August 4, 2000.

L. M. Brooks,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. 00–21569 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–203]

RIN 2115–AA97

Safety Zone: McArdle (Meridian Street) Bridge, Chelsea River, Chelsea, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Chelsea River for the McArdle Bridge. The safety zone temporarily closes all waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the McArdle Bridge. The safety zone is needed to protect vessels from the hazards posed during repairs to the bascule floor beams and bridge fender system.

DATES: This rule is effective from Friday, August 11, 2000, through Friday, October 6, 2000. During the effective dates, the channel will be closed Monday through Thursday from

sunset to sunrise, and Friday at sunset until Monday at sunrise each week. Monday through Friday from sunrise to sunset each day, the channel will be open with construction on-going.

ADDRESSES: Documents as indicated in this preamble are part of docket CGD01–00–203 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) David Sherry, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Conclusive information about bridge repairs to the McCardle Bridge were not provided to the Coast Guard until August 1, 2000, making it impossible to draft or publish a NPRM or a final rule 30 days in advance of its effective date. Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to close a portion of the Chelsea River and protect the maritime public from the hazards associated with bridge repair activities.

Background and Purpose

The McArdle Bridge over the Chelsea River, Chelsea, MA, fender system and bascule floor beams require repairs. During the repair evolution, barges will be moored in the center of the channel. Barge placement requires the closure of the waterway to ensure vessel safety during repairs to the bridge fender system. Additionally, certain structural repair work will prevent the bridge from opening for prolonged periods.

This regulation establishes a safety zone in all waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the McArdle Bridge. This safety zone prohibits entry into or movement within this portion of the Chelsea River. In an effort to maximize commerce during the closures, waterway users were invited to provide input at meetings on the following dates: May 18 and 26, June 12 and 18, and August 1, 2000. The meetings, hosted by Marine Safety Office Boston, were attended by 15 stakeholders and promoted a consensus of the most favorable channel closure times.

The repair work requires the closures to extend for at least 48 hours once a week, which minimizes lost work time due to setting up and cleaning the site for ship traffic, and minimizes the number of times the river will be required to be closed for repair work. The Coast Guard was able to balance this need with community demands through the aforementioned open forum. The group arrived at a consensus between marine operators, the bridge owner, Massachusetts State Highway officials, construction contractor, and harbor pilots. 33 Code of Federal Regulations, § 165.120 places limitations on night time Chelsea River transits, making daylight hours more favorable to maritime commerce in the river. Therefore, the group, based on the contractor's recommendation, agreed that the majority of the closures should occur between sunset and sunrise. The safety zone will be effective from Friday, August 11, 2000 through Friday, October 6, 2000. During the effective dates, the channel will be closed Monday through Thursday from sunset to sunrise, and Friday at sunset until Monday at sunrise each week. Monday through Friday from sunrise to sunset each day, the channel will be open with construction on-going. The Coast Guard will make Marine Safety Information Broadcasts and Local Notice to Mariners announcements informing mariners of this safety zone.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the limited duration of the safety zone and limited commercial traffic expected in the area during the effective periods. Moreover, commercial operators will receive advance channel closure notification through Port Operators Group meetings, Safety Marine Information Broadcasts and industry dissemination. The early notification will permit mariners ample time to alter voyage plans.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612.), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Chelsea River between August 11, 2000 through October 6, 2000.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The Coast Guard will issue maritime advisories before the effective period that will be widely available to users of the river; and the closures are based on waterway user input.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding this final rule so that they could better evaluate its effects on them and participate in the rulemaking process. The Coast Guard coordinated meetings on May 18 and 26, June 12 and 18, and August 1, 2000, involving Chelsea River users to gain input and feedback on closures. The group organized and agreed upon the schedule provided. If your small business or organization would be affected by this final rule and you have questions concerning its provisions or options for compliance, please call Lieutenant (Junior Grade) David Sherry, telephone (617) 223–3000.

The Ombudsman at Regulatory Enforcement for Small Business and Agriculture, and 10 Regional Fairness Boards, were established to receive comments from small business about enforcement by Federal agencies. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposal calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have federalism implications under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–203 to read as follows:

§ 165.T01–203 Safety Zone: McArdle Bridge, Chesea River, Chelsea, MA.

(a) *Location.* The following area is a safety zone:

All waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the McArdle Bridge.

(b) *Effective dates.* This rule is effective Friday, August 11, 2000 through Friday, October 11, 2000. During the effective dates, the channel will be closed Monday through Thursday from sunset to sunrise, and Friday at sunset until Monday at sunrise each week. Monday through Friday from sunrise to sunset each day, the channel will be open with construction on-going.

(c) *Regulations.*

(1) Entry into or movement within this zone is prohibited unless authorized by the Captain of The Port Boston.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard.

(3) The general regulations covering safety zones in § 165.23 of this part apply.

Dated: August 9, 2000.

M.E. Landry,

Commander, U.S. Coast Guard, Acting Captain of the Port, Boston, Massachusetts.

[FR Doc. 00–21568 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Emergency Closures and Adjustments—Kuskokwim Drainage, Redoubt Lake, and Yukon Drainage

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Emergency closures and adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's emergency closures and adjustments to protect chinook salmon escapement in the Kuskokwim River drainage, chinook and summer chum salmon escapement in the Yukon River drainage, and sockeye salmon escapement in Redoubt Lake. These closures and adjustments provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on January 8, 1999. Those regulations redefined the area subject to the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act of 1980, and also established regulations for seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2000 regulatory year.

DATES: The Kuskokwim River drainage closure and restrictions are effective July 10, 2000, through September 10, 2000. The Redoubt Lake closure is effective July 13, 2000, through August 31, 2000. The Yukon River drainage restrictions are effective July 19, 2000, through September 17, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126)

requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

Subpart D regulations for the 2000 fishing seasons and harvest limits, and methods and means were published on January 8, 1999, (64 FR 1276).

These emergency closures and adjustments are necessary because of extremely weak returns of chinook (king) salmon in the Kuskokwim River drainage, of chinook and summer-run chum salmon in the Yukon River drainage, and of sockeye (red) salmon in Redoubt Lake. These emergency actions are authorized and in accordance with 50 CFR 100.19(c) and 36 CFR 242.19(c).

Kuskokwim River Drainage

The Federal Subsistence Board, the Alaska Department of Fish and Game, and subsistence users are concerned that there are not enough king salmon returning to the Kuskokwim River and its tributaries to meet escapement on the spawning grounds. All king salmon escapement monitoring projects are showing extremely weak king salmon returns (60–85% lower than in recent years) throughout the Kuskokwim River drainage. This extremely low escapement could jeopardize the viability of future returns. This is the second consecutive year with poor chinook salmon returns for the Kuskokwim River. Subsistence users are also reporting very low catches of king salmon.

The State Board of Fisheries (BOF) met on Saturday July 8, 2000 to review the status of king salmon returns on the Kuskokwim River and determined that an emergency exists. The BOF then took action to (1) restrict drift and set gill net mesh size to six inches or less for the subsistence fishery in the entire Kuskokwim River drainage, and (2) reduce the daily bag and possession limit in the entire Kuskokwim River drainage to one king salmon when subsistence fishing using a line attached to a rod or pole. In addition, ADF&G has closed the sport fishery for king salmon in the entire Kuskokwim River drainage and no commercial fishing periods are being considered for the Kuskokwim River.

On July 10, the Federal Subsistence Board adopted an emergency action restricting drift and set gillnet mesh size to six inches or less for the subsistence fishery in the Kuskokwim River drainage within the boundaries of the Yukon Delta National Wildlife Refuge, and reducing the daily bag and possession limit in the Kuskokwim River drainage to one chinook salmon with a rod and reel. The gear restriction to six inches or less will minimize the chinook harvest to a few smaller fish (which are predominantly male) while allowing subsistence users the opportunity to continue to harvest chum, sockeye, and coho salmon, whitefish and other resident fish species. The smaller gillnet mesh would also protect the larger female king salmon. Female and large male king salmon are more susceptible to a gillnet with eight inch mesh or larger. The limited rod and reel harvest does allow for subsistence users to catch a king salmon for immediate consumption when necessary. This would also bring the Federal subsistence fishing regulations in line with the similar BOF action for unified management and minimize confusion under the dual management system.

Yukon River Drainage

Returns of chinook and summer chum salmon to the Yukon River are at or near recorded lows. Low catches of chinook salmon have also been reported by many subsistence fishermen. Federal and State Managers and many subsistence users in the region have strong concerns that not enough chinook or summer chum salmon will reach their spawning grounds. All chinook and summer chum salmon escapement monitoring projects show that the returns of these species are very weak throughout the entire Yukon River drainage. The various weirs, sonars and counting stations in the drainage reported chinook salmon returns 41% to 85% below average and summer chum returns 49% to 91% below average.

The Alaska Department of Fish and Game issued Emergency Orders closing sport fishing for chinook and chum salmon in the Yukon drainage and restricting subsistence fishing to certain times each week in the various fishing districts along the river. The commercial and personal use fishery in the Yukon River had previously been closed.

On July 19, the Federal Subsistence Board instituted the following adjustments for the Yukon River drainage:

During any commercial salmon fishing season closure of greater than five days in duration, you may take salmon only during the following periods in the following districts:

(A) In Districts 1, 2, and 3, salmon may be taken from 9:00 a.m. until 9:00 p.m. each Saturday;

(B) In District 4, salmon may be taken from 6:00 p.m. Tuesday until 6:00 p.m. Wednesday and from 6:00 p.m. Friday until 6:00 p.m. Saturday;

(C) In District 5, salmon may be taken from 9:00 p.m. Saturday until 9:00 p.m. Sunday, from 9:00 p.m. Tuesday until 9:00 a.m. Wednesday, and from 9:00 p.m. Thursday until 9:00 a.m. Friday;

(D) In District 6, salmon may be taken from 6:00 p.m. Monday until 6:00 p.m. Tuesday.

During any commercial salmon fishing season closure of greater than five days in duration, you may take fish other than salmon only with gillnets with a stretched mesh size of 4 inches or less or with other legal gear except fishwheels.

These adjustments bring the Federal subsistence fishing regulations in line with the similar ADF&G action for unified management and minimize confusion under the dual management system.

Redoubt Lake

Based on sockeye salmon returns to Redoubt Lake, State and Federal managers project an escapement of 2,300 fish for the 2000 season. This projection represents 6% of the average escapement of 36,000 sockeye during the period 1989–1999. Since the projected escapement is well below desired levels for this system, the system is being closed to provide for spawning escapement needs. The Federal Subsistence Board on July 13 closed the Federal freshwater sockeye subsistence fishery at Redoubt Lake due to the very low escapement numbers. This action parallels ADF&G action that closed both sport and subsistence harvest for sockeye salmon in Redoubt Lake and Bay.

The Board finds that additional public notice and comment requirements under the Administrative Procedures Act (APA) for these emergency closures and adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(d) to waive additional public notice and comment procedures prior to implementation of these actions.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision (ROD) signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

These emergency closures and adjustments do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

These emergency closures and adjustments are not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments determined that these emergency closures and adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

These emergency closures and adjustments will impose no significant costs on small entities.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these emergency closures and adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that these emergency closures and adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that these emergency closures and adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

In accordance with Executive Order 13132, these emergency closures and adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

Drafting Information

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Curt Wilson, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: August 18, 2000.

Kenneth E. Thompson,

Subsistence Program Leader, USDA-Forest Service.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

[FR Doc. 00–21613 Filed 8–23–00; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301038; FRL–6738–1]

RIN 2070–AB78

DIMETHENAMID; PESTICIDE TOLERANCES FOR EMERGENCY EXEMPTIONS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of

dimethenamid, 2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide in or on dry bulb onions, sugar beets roots, tops, pulp and molasses. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on dry bulb onions and sugar beets. This regulation establishes a maximum permissible level for residues of dimethenamid in these food commodities. The tolerances will expire and are revoked on December 31, 2002.

DATES: This regulation is effective August 24, 2000. Objections and requests for hearings, identified by docket control number OPP–301038, must be received by EPA on or before October 23, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301038 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6463; and e-mail address: madden.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–301038. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the herbicide dimethenamid, 2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide, in or on dry bulb onions at 0.01 part per million (ppm), sugar beets roots and tops at 0.01 ppm and sugar beet dry pulp and molasses at 0.05 ppm. These tolerances will expire and are revoked on December 31, 2002. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Dimethenamid on Onions and Sugar Beets and FFDCA Tolerances

1. *Onions.* Onions in New York are seeded in early spring in cool soils and, therefore, grow very slowly during the first weeks of the season, thus, onions can quickly be overrun by early germinating weeds. Because of the manner in which an onion plant grows,

it never develops a leaf canopy that shades the soil as effectively as do most crops. Consequently, an onion crop remains subject to weed competition throughout the growing season. Any weeds not controlled during the first 6–8 weeks usually must be removed by hand, as they are no longer susceptible to most postemergence herbicides and cannot be removed by mechanical cultivation. For weeds within the onion row, even hand weeding becomes impractical as weeds get large because they cannot be pulled out of the soil without uprooting adjacent onion plants.

Until the mid 1980's, New York onion growers relied on the herbicide, Randox, for effective broad spectrum weed control. After Randox was discontinued, it was replaced primarily by Prowl. However, Prowl has no activity on yellow nutsedge and in the last 10 to 15 years almost all of muck soil onion fields have been infested with yellow nutsedge. Prowl also fails to control a number of other broad leaf weeds that Randox once controlled. Dual, a herbicide registered for use to control yellow nutsedge, only provides limited control because it can not be used until the onions are in the 2-leaf stage and in most cases yellow nutsedge infestations are out of control by that time.

2. *Sugar Beets*. Historically, one application of Ro-Neet applied alone or sequentially with one application of Eptam, followed by one or two cultivations provided acceptable season-long control of weeds for many Washington sugar beet growers. By 1998, growers began to question whether products that had once provided effective control in sugar beets were still providing acceptable levels of control. By the 1999 growing season, growers felt that currently registered herbicides were no longer sufficient to allow cost effective sugar beet production.

EPA has authorized under FIFRA section 18 the use of dimethenamid on dry bulb onions in New York and sugar beets in Washington for control of weeds. After having reviewed the submission, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of dimethenamid in or on dry bulb onions and sugar beets. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2002, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on dry bulb onions and sugar beets after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether dimethenamid meets EPA's registration requirements for use on dry bulb onions and sugar beets or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of dimethenamid by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than New York and Washington to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for dimethenamid, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of dimethenamid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of dimethenamid in or on dry bulb onions at 0.01 ppm, sugar beets roots and tops at 0.01 ppm and sugar beet dry pulp and molasses at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10x for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10x to account for interspecies differences and 10x for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific

circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. The RfD approach is used when the chronic dietary risk assessment using the RfD will be adequately protective for cancer risk as well as other chronic effects. Therefore, with the RfD approach no separate carcinogenic risk assessment is necessary. The doses and toxicological endpoints selected and the LOC for margins of exposure for various exposures scenarios are summarized in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR DIMETHENAMID FOR USE IN HUMAN RISK ASSESSMENT

Exposure scenario	Dose used in risk assessment, UF	FQPA SF* and level of concern for risk assessment	Study and toxicological effects
Acute dietary females 13–50 years of age	NOAEL = 215 mg/kg/day; UF = 100; Acute RfD = 2.15 mg/kg/day	FQPA SF = 10x; aPAD = acute RfD ÷ FQPA SF = 0.215 mg/kg/day	Developmental toxicity, rat; LOAEL is 425 mg/kg/day based on early resorption.
Acute Dietary general population including infants and children	NOAEL = 215 mg/kg/day; UF = 100; Acute RfD = 2.15 mg/kg/day	FQPA SF = 10x aPAD = acute RfD ÷ FQPA SF = 0.215 mg/kg/day	Developmental toxicity, rat; LOAEL is 425 mg/kg/day based on early resorption.
Chronic dietary all populations	NOAEL = 5.1 mg/kg/day; UF = 100; Chronic RfD = 0.05 mg/kg/day	FQPA SF = 10x; cPAD = chronic RfD ÷ FQPA SF = 0.005 mg/kg/day	Chronic rat study; LOAEL is 36 mg/kg/day (males) based on increased incidences of non-neoplastic alterations in liver, parathyroid and stomach of males and ovary of females, as well as decreased food efficiency in females.
Short-Term dermal (1 to 7 days) (residential)	None	None	None
intermediate-Term dermal (1 week to several months) (residential)	None	None	None
long-Term dermal (several months to lifetime) (residential)	None	None	None
Short-Term Inhalation (1 to 7 days) (residential)	None	None	None
intermediate-Term Inhalation (1 week to several months) (residential)	None	None	None
long-Term Inhalation (several months to lifetime) (residential)	None	None	None
Cancer (oral, dermal, inhalation)	NOAEL = 5.1 mg/kg/day; UF = 100; Chronic RfD = 0.05 mg/kg/day	Category ''C'' (possible human carcinogen)	Chronic rat study; increased tumor incidence only in rats (not mice). Significant increasing dose-related trend in combined benign and/or malignant liver tumor rates in males (not significant pair-wise comparison). In females, significantly increasing dose-related trend in ovarian adenomas (not significant pair-wise comparison). Incidence at 80 mg/kg/day (HDT) about twice the average of historical incidence. Quantitative cancer risk assessment not required.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Dimethenamid is registered for use on various agricultural commodities. Tolerances have been established (40 CFR 180.464) for the residues of dimethenamid, in or on dry beans, corn, sweet corn, peanuts, sorghum and soybeans. Currently, dimethenamid is not registered on any use sites which would result in non-dietary, non-occupational exposure. Therefore, EPA expects only dietary and occupational exposure will result from the use of dimethenamid. Risk assessments were conducted by EPA to assess dietary exposures from dimethenamid in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-

use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: all residues occurred at tolerance levels and 100% of crops with dimethenamid tolerances were treated.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: all residues occurred at tolerance levels and that 100% of crops with dimethenamid tolerances were treated.

iii. *Cancer.* Dimethenamid has been classified as a Category ''C'' (possible human carcinogen), based on increased tumor incidence only in rats (not mice). The Agency determined that a quantitative cancer risk assessment is not required. The RfD approach was used to estimate cancer risk. Therefore the chronic (non-cancer) risk assessment is adequate estimate of cancer risk as well as other chronic effects.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for dimethenamid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of dimethenamid.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to dimethenamid they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models the estimated environmental concentrations (EECs) of dimethenamid in surface water and ground water, for acute exposures are estimated to be 63.5 parts per billion (ppb) for surface water and 0.412 ppb for ground water. The EECs for chronic exposures are estimated to be 17 ppb for surface water and 0.412 ppb for ground water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Dimethenamid is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA does not have, at this time, available data to determine whether dimethenamid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, dimethenamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that dimethenamid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances November 26, 1997, (62 FR 62961) (FRL–5754–7).

C. Safety Factor for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-natal and post-natal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

ii. *Developmental toxicity studies.* In a developmental toxicity study in rats, maternal toxicity was evidenced by excessive salivation, increased liver weight and reduced body weight gain and food consumption at 215 and 425 milligrams per kilogram per day (mg/kg/day). Developmental toxicity was evidenced by an increased incidence of resorption in the 425 mg/kg/day rats. The maternal NOAEL is 50 mg/kg/day and the maternal LOAEL is 215 mg/kg/day. The developmental NOAEL is 215 mg/kg/day and the developmental LOAEL is 425 mg/kg/day.

In a developmental toxicity study in rabbits, maternal toxicity was evidenced by decreased body weight, food consumption and increased abortion/premature delivery at 75 and 150 mg/

kg/day. Developmental toxicity was evidenced by increased abortion/premature delivery and hyoid alae angulated changes in the 150 mg/kg group. The maternal NOAEL is 37.5 mg/kg/day and the maternal LOAEL is 75 mg/kg/day. The developmental NOAEL is 75 mg/kg/day and the developmental LOAEL is 150 mg/kg/day.

iii. *Reproductive toxicity study.* In a 2–generation reproductive study in rats, parental toxicity was evidenced by significant reductions in body weight and food consumption in males and significant increases in absolute and relative liver weights in both sexes. Significant reductions in pup weight during lactation occurred at 150 mg/kg/day. The parental NOAEL is 36 mg/kg/day and the parental LOAEL is 150 mg/kg/day. The reproduction NOAEL is 36 mg/kg/day and the reproduction LOAEL is 150 mg/kg/day.

iv. *Conclusion.* Based on the rat and rabbit developmental toxicity studies as well as the rat reproduction study, there did not appear to be an increase in the sensitivity of fetuses or offspring in relation to either maternal or parental toxicity. However, for purposes of these section 18 uses, the additional FQPA 10x safety factor was retained since the Agency's FQPA Safety Factor Committee has not assessed dimethnamid at this time.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD − (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to dimethenamid in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of dimethenamid on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to dimethenamid will occupy less than 1% of the aPAD for the U.S. population, less than 1% of the aPAD for females 13 years and older, less than 1% of the aPAD for all infants and less than 1% of the aPAD for all children. In addition, despite the potential for acute dietary exposure to dimethenamid in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of dimethenamid in surface and ground water. EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.— AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO DIMETHENAMID

Population subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface water EEC (ppb)	Ground water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population	0.215	Less than 1%	65.5	0.412	7,500
Females (13–19 years old)	0.215	Less than 1%	65.5	0.412	6,500
All Infants	0.215	Less than 1%	65.5	0.412	2,200

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to dimethenamid from food will utilize less than 1% of the cPAD for the U.S. population, 2% of the cPAD for non-nursing infants (the most highly exposed infant subpopulation) and 1% of the cPAD for children 1–6 years old (the most highly exposed children subpopulation). There are no registered residential uses for dimethenamid. In addition, despite the potential for chronic dietary exposure to dimethenamid in drinking water, after calculating the DWLOCs and comparing them to conservative model estimated environmental concentrations of dimethenamid in surface and ground water. EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3.

TABLE 3.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO DIMETHENAMID

Population subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.005	Less than 1%	17	0.412	180
Non-Nursing infants	0.005	2%	17	0.412	50
Children, 1–6 years old	0.005	1%	17	0.412	49

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Dimethenamid is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk.* intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Dimethenamid is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* Dimethenamid has been classified as a Category ''C'' (possible human carcinogen). Based on increased tumor incidence only in rats (not mice). The Agency determined that a quantitative cancer risk assessment is not required. The RfD approach was used to estimate cancer risk. Therefore, the chronic (non-cancer) risk assessment, which was previously addressed, is adequately protective for cancer risk as well as other chronic effects.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population,and to infants and children from aggregate exposure to dimethenamid residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate analytical methodology is available to enforce the tolerance expression. Nitrogen Phosphorus Detection-Gas Liquid Chromatography (NPD-GLC) method (AM–0884–0193–1) has been submitted (7/89) for publication in the Pesticide Analytical Manual, Volume II, to enforce tolerances for residues of dimethenamid in/on plant and soil samples. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

B. International Residue Limits

There are no established Codex, Mexican, or Canadian maximum residue limits for dimethenamid in/on onions, dry bulb and sugar beet, tops and sugar beet, roots.

C. Conditions

A 30–day pre-harvest interval will be observed for dry bulb onions. No pre-harvest interval is required for sugar beets due to the timing of the applications.

VI. Conclusion

Therefore, the tolerance is established for residues of dimethenamid, 2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide, in or on dry bulb onions at 0.01 ppm, sugar beets roots and tops at 0.01 ppm and sugar beet dry pulp and molasses at 0.05 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirementof a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301038 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 23, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St.,SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP–301038, to: Public

Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes time limited tolerances under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*, August 10, 1999 (64 FR 43255). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register** This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

August 15, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.464 is revised to read as follows:

§ 180.464 Dimethenamid, 2-chloro-N-[(1-methyl-2-methoxy)ethyl]-N-(2,4-dimethylthien-3-yl)-acetamide

(a) *General.* Tolerances are established for residues of the herbicide dimethenamid, 1(R,S)-2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethylthien-3-yl)-acetamide in or on the following food commodities:

Commodity	Parts per million
Beans, dry	0.01
Corn, fodder	0.01
Corn, forage	0.01
Corn, grain	0.01
Corn, sweet, fodder (stover)	0.01
Corn, sweet, forage	0.01
Corn, sweet (kernels plus cobs with husks removed)	0.01
Peanut, hay	0.01
Peanut, nutmeat	0.01
Sorghum, grain, fodder	0.01
Sorghum, grain, forage	0.01
Sorghum, grain	0.01
Soybeans	0.01

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the herbicide dimethenamid in connection with the use of the pesticide under section 18 emergency exemptions granted by EPA. These tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Beet, sugar ...	0.01	12/31/02
Beet, sugar, dried pulp ..	0.05	12/31/02
Beet, sugar, molasses ...	0.05	12/31/02
Beet, sugar, tops	0.01	12/31/02
Onion, dry bulb	0.01	12/31/02

(c) *Tolerances with regional registrations*. [Reserved]

(d) *Indirect or inadvertent residues*. [Reserved]

[FR Doc. 00–21672 Filed 8–23–00; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1754; MM Docket No. 98–99; RM–9283 and RM–9695]

Radio Broadcasting Services; Shoshoni and Dubois, Wyoming

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making,* 63 FR 36199 (July 2, 1998), this document allots Channels 290C and 244A to Shoshoni, Wyoming as the community's first and second local transmission services. The coordinates for those channels are 43–14–06 North Latitude and 108–06–36 West Longitude. This document also allots Channel 231A to Dubois, Wyoming as that community's first local service. The coordinates for Channel 231A are 43–32–36 North Latitude and 109–37–48 West Longitude.

DATES: Effective September 18, 2000. Filing windows for channels 290C and 244A at Shoshoni and Channel 231A at Dubois will not be opened at this time. Instead, the issue of opening a filing window for those channels will be addressed by the Commission in a subsequent Order.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–99, adopted July 26, 2000, and released August 4, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Shoshoni, Channels 290C and 244A, and Dubois, Channel 231A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–21575 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications,* 8 FCC Rcd 4735 (1993).

DATES: Effective August 24, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted August 2, 2000, and released August 11, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 253B and adding Channel 253B1 at Delano and by removing Channel 237B1 and adding Channel 237B at Fort Bragg.

3. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 288A and adding Channel 289C3 at Sterling.

4. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 235C and adding Channel 235C1 at Atlanta.

5. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 271A and adding Channel 271C1 at Driggs and by removing Channel 296A and adding Channel 296C1 at Idaho Falls.

6. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 236A and adding Channel 236B1 at Carterville.

7. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 265A and adding Channel 265C3 at Clay Center.

8. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 221C3 and adding Channel 221C2 at Carlisle and by

removing Channel 222C2 and adding Channel 222C3 at London.

9. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 250A and adding Channel 250C2 at De Ridder.

10. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 288A and adding Channel 288C1 at Pickford.

11. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 272C3 and adding Channel 275C1 at Kearney.

12. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 275A and adding Channel 275C2 at Las Vegas.

13. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 259A and adding Channel 259C3 at Bend.

14. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 251C2 and adding Channel 251C1 at Anson and by removing Channel 240C3 and adding Channel 239C2 at Big Spring and by removing Channel 284C and adding Channel 284C1 at Burkburnett and by removing Channel 236C2 and adding Channel 236C1 at Comfort and by removing Channel 241C2 and adding Channel 241C1 at Odessa and by removing Channel 285C2 and adding Channel 285C1 at Pilot Point and by removing Channel 245A and adding Channel 245C3 at Pittsburg.

15. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 249A and adding Channel 249C3 at East Wenatchee.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–21398 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000511130-0237-02; I.D. 032900C]

RIN 0648-AN25

Fisheries of the Exclusive Economic Zone Off Alaska; Allocation of Pacific Cod among Vessels Using Hook-and-line or Pot Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; revision of final 2000 harvest specifications; closure.

SUMMARY: NMFS issues regulations to implement Amendment 64 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). NMFS also revises the 2000 harvest specifications for Pacific cod in the Bering Sea and Aleutian Islands management area (BSAI) to be consistent with these regulations and closes directed fishing for Pacific cod in the BSAI by hook-and-line catcher vessels over 60 ft length overall (LOA) and pot vessels over 60 ft LOA. This closure is necessary to prevent exceeding the respective allocations of the hook-and-line and pot gear (fixed gear) Pacific cod total allowable catch (TAC) specified for each of these gear sectors in Amendment 64 and implemented by this final rule and the revised specifications. This final rule is necessary to implement Amendment 64 and to respond to the fishing industry's socioeconomic needs that have been identified by the North Pacific Fishery Management Council (Council). It is intended to promote the goals and objectives of the FMP.

DATES: Final rule and revisions to the specifications are effective September 1, 2000; Closure is effective 1200 hrs, Alaska local time (A.l.t.), September 1, 2000, until 2400 hrs, A.l.t., December 31, 2000.

ADDRESSES: Copies of Amendment 64 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and the supplementary Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from the Council at 605 West 4th Avenue Suite 306, Anchorage, AK 99501, telephone 907-271-2809. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to Regional Administrator, 709 West Ninth Street, Federal Office Building, Suite 453, National Marine Fisheries Service, Ju:neau, AK 99801.

FOR FURTHER INFORMATION CONTACT: James Hale, 907-586-7228.

SUPPLEMENTARY INFORMATION : NMFS manages the groundfish fisheries in the Exclusive Economic Zone (3 to 200 miles offshore) of the BSAI pursuant to the FMP, which the Council prepared and NMFS approved in accordance with the Magnson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265, 16 U.S.C. 1801 (Magnson-Stevens Act).

The Council adopted Amendment 64 at its October 1999 meeting. NMFS published the Notice of Availability for the amendment in the **Federal Register** on April 11, 2000 (65 FR 19354), inviting public review and comment on the FMP amendment through June 12, 2000. NMFS approved Amendment 64 on July 12, 2000.

NMFS published a proposed rule to implement Amendment 64 and revise the 2000 harvest specifications for Pacific cod in the **Federal Register** on May 26, 2000 (65 FR 34133). The public comment period on the proposed rule ended on July 10, 2000. NMFS received a total of 14 letters of comment, 11 supporting the amendment and 3 opposing it. All comments are summarized and responded to under the Response to Comments section.

Background and Need for Action

Beginning in 1997, Amendment 46 to the FMP allocated the TAC for BSAI Pacific cod among vessels using jig gear, trawl gear, and fixed gear. Two percent of the TAC is reserved for jig gear, 47 percent for trawl gear, and 51 percent for fixed gear. The amendment further split the trawl allocation equally between catcher vessels and catcher/processor vessels, but no split was adopted for the 51 percent allocated to hook-and-line and pot vessels.

Increased prices for Pacific cod, reduced crab guideline harvest levels, and shortened or canceled crab seasons due to low resource abundance have resulted in increased harvests of Pacific cod by vessels using pot gear. Fishermen displaced from crab fisheries have expressed ongoing interest in fishing for Pacific cod, aggravating concerns by long-term Pacific cod fishermen about erosion of their gear harvest shares in the cod fishery in favor of new entrants using pot gear who, until very recently, focused harvest activity in the BSAI crab fisheries.

In response to these concerns, the Council initiated an analysis at its April 1999 meeting of the effects of splitting the fixed gear allocation of Pacific cod in the BSAI among hook-and-line catcher/processor vessels, hook-and-line catcher vessels, and catcher vessels and catcher/processors using pot gear. At its June 1999 meeting, the Council reviewed the analysis and drafted the following problem statement to guide further analysis of alternatives for Amendment 64:

The hook-and-line and pot fisheries for Pacific cod in the Bering Sea/Aleutian Islands are fully utilized. Competition for this resource has increased for a variety of reasons, including increased market value of cod products and a declining acceptable biological catch and total allowable catch. Longline and pot fishermen who have made significant long-term investments, have long catch histories, and are significantly dependent on the BSAI cod fisheries need protection from others who have little or limited history and wish to increase their participation in the fishery. This requires prompt action to promote stability in the BSAI fixed gear cod fishery until comprehensive rationalization is completed.

The subsequent analysis reviewed, in addition to the status quo, alternatives for separate Pacific cod allocations for the different hook-and-line and pot gear users that approximate their historical catches over the past 4 years. The options analyzed determined those percentages based on catch histories from (1) 1996 and 1997, (2) 1997 and 1998, (3) 1996 through 1998, and (4) 1995 through 1998. In general, the allocations that would result from these options ranged between 80 and 85 percent to hook-and-line vessels and between 15 and 20 percent to pot vessels.

At its October 1999 meeting, the Council adopted Amendment 64 to set Pacific cod directed fishing allowances for the different hook-and-line and pot gear users (sectors) in the following percentages: Hook-and-line catcher/processor vessels, 80 percent; hook-and-line catcher vessels, 0.3 percent; pot gear vessels, 18.3 percent; and hook-and-line or pot catcher vessels less than 60 ft LOA, 1.4 percent. These percentages represent divisions of the hook-and-line or pot gear TAC after a deduction of estimated incidental catch of Pacific cod in other groundfish hook-and-line or pot gear fisheries.

Amendment 64 requires that specific provisions for the accounting of these directed fishing allowances and the transfer of unharvested amounts of these allowances to other vessels using hook-and-line or pot gear be set forth in regulations. This final rule sets forth these provisions.

Harvests by pot and hook-and-line catcher vessels less than 60 ft LOA will accrue against the 1.4-percent allocation only after pot vessels and hook-and-line catcher vessels harvest the respective 18.3 percent and 0.3 percent allocations. Managing the allocations in this manner will ensure that cod is available to the smaller catcher vessels even after the larger vessels in their gear sector have taken their allocation. Nevertheless, if the pot gear fishery lasts longer than the hook-and-line fishery, then the small hook-and-line catcher vessels could begin (and possibly finish) harvesting the 1.4-percent allocation before catcher vessels under 60 ft LOA using pot gear have an opportunity to harvest any of the 1.4-percent allocation set aside for smaller catcher vessels.

Because a sector of the BSAI Pacific cod fishery may not be able to harvest its entire allocation in a year due to halibut bycatch constraints or, in the case of the jig fishery, insufficient effort in the fishery, the Council also provided direction on how projected unharvested amounts of a gear's directed fishing allowance may be transferred to a different user group. Unharvested amounts (roll-overs) from the jig or trawl gear allocations will be apportioned between catcher-processors using hook-and-line gear and vessels equal to or greater than 60 ft LOA using pot gear according to the actual harvest of roll-overs by these two sectors during the 3-year period from 1996 to 1998. Projections based on information in the analysis for this action indicate that 94.7 percent of the cod will be allocated to the hook-and-line catcher-processor fleet and the remaining 5.3 percent to the pot fleet. In addition, any amounts of Pacific cod annually allocated to catcher vessels using hook-and-line gear or to vessels less than 60 ft LOA that are projected to remain unharvested will be rolled over to the hook-and-line catcher-processor fleet in September.

The Pacific cod directed fishing allowances established by Amendment 64 for the different fixed gear sectors terminate on December 31, 2003. Continuing the allocation percentages of Pacific cod set forth in Amendment 64 or changing them after that date will require Council adoption and NMFS' approval of a new FMP amendment. In adopting an expiration date for the proposed amendment, the Council reasoned that 3 years would be sufficient time to evaluate the impact of this action in light of other impending changes for the BSAI fixed-gear fishery, such as upcoming Amendment 67 to require Pacific cod and gear endorsements on permits issued under the License Limitation Program (LLP). Whereas Amendment 64 establishes allocations for different sectors of the fixed-gear fishery, upcoming Amendment 67 would limit the participants to those who meet certain historical criteria. Prior to the expiration date, the Council intends to reconsider the issue in light of other proposed changes impending for the BSAI Pacific cod groundfish fisheries, including proposed gear or species endorsements on permits issued under the license limitation program.

In adopting Amendment 64, the Council recognized that a separate regulatory amendment would be needed to apportion the 900 mt Pacific halibut prohibited species mortality limit established for nontrawl gear in regulations at § 679.21(e)(2) among catcher vessels and catcher/processor vessels fishing for Pacific cod using hook-and-line gear. Current regulations authorize only a separate Pacific halibut bycatch allowance to the ''Pacific cod hook-and-line fishery'' defined at § 679.21(e)(4)(ii)(A). Thus, catcher/processor vessels using hook-and-line gear to fish for Pacific cod could attain amounts of halibut bycatch mortality that would result in prohibition of directed fishing for Pacific cod by all vessels using hook-and-line gear, including catcher vessels using this gear type under a separate Pacific cod directed fishing allowance.

To respond to this concern, the Council has requested staff to develop an analysis of regulatory measures that would authorize further allocation of the Pacific halibut mortality limits among vessels using hook-and-line or pot gear. If the Council adopts such regulatory measures in the future, a proposed rule a proposed rule would be published for public review and comment.

Incidental Catch Allowance (ICA)

Pacific cod also are taken incidentally in directed fisheries using hook-and-line or pot gear for other species. To the extent practicable, NMFS credits this incidental harvest against the TAC to ensure that Pacific cod are not overharvested. This final rule requires the Regional Administrator of NMFS, Alaska Region, to annually establish an incidental catch allowance for Pacific cod taken in other directed hook-and-line and pot fisheries for groundfish. The incidental catch allowance will be deducted from the overall hook-and-line or pot gear allocation of the Pacific cod TAC before that allocation is divided among the different hook-and-line and pot gear user groups.

The incidental catch of Pacific cod occurs in non-groundfish fisheries such

as the hook-and-line gear fishery for Pacific halibut or the crab pot gear fisheries. Sufficient data currently are not collected from these fisheries that would allow NMFS to extrapolate useful estimates of incidental catch for purposes of specifying the annual ICA and deducting these amounts from the Pacific cod TAC allocated to vessels using hook-and-line or pot gear as directed fishing allowances. The total IAC amount of Pacific cod in the crab and Pacific halibut fisheries likely exceeds several thousand mt based on (1) anecdotal information on the amount of incidentally caught Pacific cod used as bait in the crab fisheries, (2) the fact that the Pacific halibut fishery during summer months typically occurs in relatively shallow water where Pacific cod are prevalent, and (3) assumptions on amount of gear deployed and incidental catch rates. In the absence of the quantitative data needed to estimate incidental Pacific cod harvests in the halibut and crab fisheries, NMFS intends to estimate the ICA only on the basis of incidental catch estimated for the non-Pacific cod hook-and-line or pot gear groundfish fisheries.

NMFS recognizes the potential biological significance of not accounting for all incidental catch of Pacific cod in non-trawl fisheries and intends to explore with the State of Alaska and the International Pacific Halibut Commission options to collect better information on incidental catch rates of non-target species in the crab and Pacific halibut fisheries. NMFS further anticipates that improved estimates of incidental catch amounts in these fisheries will be available to the Council when it reassesses BSAI Pacific cod allocation issues prior to the expiration date of Amendment 64. Until then, NMFS stock assessment scientists believe that, while the amounts of Pacific cod taken in the crab and Pacific halibut fisheries could exceed several thousand mt, this level of mortality does not pose significant concerns for overfishing or sustainable resource management of the Pacific cod resource given the conservative management of this species under the FMP. NMFS firmly believes that steps must be taken to collect the data necessary to obtain better estimates of overall mortality of Pacific cod in the non-groundfish fisheries.

Subsequent to the Council's October 1999 adoption of Amendment 64, several owners of catcher/processor vessels using pot gear to participate in a directed fishery for Pacific cod petitioned the Council to initiate a separate FMP amendment that would authorize separate Pacific cod directed fishing allowances for catcher/processor vessels using pot gear and catcher vessels using pot gear. This petition was based on the assumptions that increased fishing effort for Pacific cod with pot gear is due primarily to catcher vessels using pot gear and that the historical harvest share of cod by catcher/processor vessels using pot gear is threatened. In response to these concerns, the Council requested staff to develop a separate FMP amendment that would authorize a further allocation of Pacific cod between these two sectors. If adopted by the Council in the future, the proposed amendment and a proposed rule to implement it would be published in the **Federal Register** for public review and comment.

Revision of 2000 Harvest Specifications for Pacific Cod

In December 1999, the Council recommended seasonal allowances for the 51 percent of the Pacific cod TAC allocated to the hook-and-line or pot gear fisheries. The seasonal allowances are authorized under § 679.20(a)(7)(iv) and are based on the criteria set forth at § 679.20(a)(7)(iv)(B). The final 2000 harvest specifications for BSAI groundfish were approved by NMFS and published in the **Federal Register** on February 18, 2000 (65 FR 8282).

By this action NMFS also revises the final 2000 harvest specifications in concert with the hook-and-line and pot gear allocations in the amendment. The final 2000 harvest specifications set the hook-and-line or pot gear allocation of the 2000 Pacific cod TAC at 91,048 mt. An incidental catch allowance of 500 mt, derived from estimates of incidental catch of Pacific cod in other groundfish fisheries from 1996-1999, will be deducted from the hook-and-line or pot gear allocation of the Pacific cod TAC before the allocation is apportioned to the separate gear sectors.

As noted in the preamble to the proposed rule (65 FR 34133, May 26, 2000), a mid-year implementation of Amendment 64 requires that any overage of a sector's annual allocation of Pacific cod be deducted proportionately from the other sectors' allocations remaining for the year. The directed fishery for Pacific cod by vessels using pot or hook-and-line gear was closed on March 10, 2000, when harvest amounts reached the first seasonal allowance of Pacific cod specified for these vessels. At that time, the pot-gear fishery had harvested 20.4 percent of the annual fixed gear directed fishing allowance. This amount represents 111 percent of the 2000 allocation for pot gear vessels (regardless of LOA) authorized by Amendment 64. Also, the hook-and-line catcher vessel fleet had harvested 0.35 percent of the directed fishing allowance for the fixed gear fleet, or 116 percent of the 2000 allocation for all hook-and-line catcher vessels (regardless of LOA) authorized under Amendment 64. Because these allocations have been exceeded, this action also closes the hook-and-line catcher vessel and pot gear sectors to further directed fishing for Pacific cod in the BSAI in 2000.

The Council intends that harvests by fixed gear sector vessels under 60 ft LOA only accrue against the allocation to fixed gear vessels under 60 ft LOA after the pot or longline catcher vessels harvested their 18.3 percent and 0.3 percent allocations, respectively. This set aside allocation provides that the smaller vessels will have Pacific cod available for harvest even after the larger vessels in their sector have taken their allocation. The hook-and-line catcher/processor and small vessel sectors' allocations are adjusted downward to account for the overharvests by pot gear and hook-and-line catcher vessels. Table 1 lists the revisions to the final 2000 allocations and seasonal apportionments of the Pacific cod TAC.

Consistent with § 679.20(a)(7)(iv)(C), any portion of the first seasonal allowance of the catcher/processor hook-and-line gear allocation that is not harvested by the end of the first season will become available on September 1, the beginning of the third season. No seasonal apportionment of the amounts of Pacific cod allocated to catcher vessels or to vessels using pot gear is specified for 2000.

TABLE 1.—YEAR 2000 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD HOOK-AND-LINE AND POT GEAR ALLOCATION

Gear Sector	Percent	Share (mt)	Harvest (mt) as of 7/13/ 2000	Adjusted Share (mt)[1]	Seasonal apportionment[2]	
					Date	Amount (mt)
Hook-and-Line Catcher-Processors	80	72,438	40,433	70,558	Jan 1-Apr 30	50,237
					May 1-Aug 31 ...	---
					Sept 1-Dec 31 ..	20,321
Hook-and-Line Catcher-Vessels	0.3	272	318	--	Jan 1-Dec 31	272
Pot Gear Vessels	18.3	16,570	18,442	--	Jan 1-Dec 31	16,570
Catcher Vessels under 60 feet LOA using Hook-and-line or Pot Gear	1.4	1,268	.....	1,230	Jan 1-Dec 31	1,230
Sub-total	100	90,548	.....	.....	.....	90,548
Incidental Catch Allowance	.....	500	.....	.....	.....	500
Total hook-and-line and pot gear allocation of Pacific cod TAC	.....	91,048	.....	.....	.....	91,048

[1] Shares are adjusted proportionately to account for overages by the hook-and-line catcher vessel and pot gear sectors.
[2] Any unused portion of the first seasonal Pacific cod allowance specified for catcher/processors using hook-and-line fishery will be reapportioned to the third seasonal allowance.

Response to Comments

NMFS received a total of 14 letters of comment, all of which are summarized and responded to in this section. Of the total, the 11 letters that support the amendment and make essentially the same comment are summarized under comment 1. Of the three letters opposing the amendment, the two signed by a single author, make the same objections to the amendment and are summarized under comment 2; the third letter is summarized under comment 3.

Comment 1. Amendment 64 is necessary to the stability and overall rationalization of the fixed gear Pacific cod fishery in the BSAI, especially with the likely increase of fishing effort by vessels formerly targeting crab. All comment writers encourage prompt implementation of the amendment, and six letters explicitly entreat NMFS to implement the amendment by September 1.

Response. NMFS agrees and is expediting implementation of the amendment.

Comment 2. Amendment 64 and its implementing rule are opposed for the following four reasons: (1) The Initial Regulatory Flexibility Analysis (IRFA) for Amendment 64 does not satisfy the requirements of the Regulatory Flexibility Act (RFA) because the IRFA estimates the number of small entities impacted by this action, rather than specifying their exact number. (2) Because the exact number of affected small entities is unknown, NMFS could not adequately consider measures that would minimize any impacts on small entities. (3) For purposes of the RFA, pot vessels constitute the ''universe of small entities'' potentially impacted by this action and should, therefore, be the sole focus of any measures to mitigate this action's impact on small entities. (4) Amendment 64 does not adhere to the conservation and community goals of the Magnson-Stevens Act, as required by national standard 4 (allocations shall be fair and equitable), national standard 5 (conservation and management measures shall consider efficiency, but not have economic allocation as their sole purpose), and national standard 8 (conservation and management measures shall provide for the sustained participation of fishing communities and minimize adverse impacts on such communities).

Response. Section 603(b)(3) of the RFA requires that an IRFA contain ''a description of and, where feasible, an estimate of the number of small entities'' to which an action will apply. The IRFA and supplemental IRFA for Amendment 64 contain such a description and a reasonable estimate of the number of affected small entities, as defined by the RFA (see **Classification** for a summary of the IRFA and the estimated numbers of affected small entities).

For purposes of the RFA, a small entity is defined as a business that is independently owned and operated, is not dominant in its field of operation, and has combined annual receipts not in excess of $3 million. The IRFA identifies such entities in the BSAI fixed gear Pacific cod fishery, many of which are not pot vessels. Construing pot vessels alone as the entire ''universe'' of affected small entities would fail to satisfy the agency's requirements under the RFA. Those requirements are met by considering all small entities as the ''universe of small entities'' potentially impacted by the action.

The EA/RIR/IRFA for Amendment 64 presented alternatives with different percentage allocations, each of which represented tradeoffs in terms of impacts. Some small entities may be negatively impacted, and others positively impacted. Amendment 64, the Council's preferred alternative, represents the Council's deliberate intent to minimize impacts on small entities by allocating more cod to catcher vessels delivering to shore-based processors than they have historically harvested. That allocation will tend to benefit small entities. Conversely, the freezer longline fleet, with the highest percentage of large entities, will receive a smaller allocation to balance the increase given to small entities.

Amendment 64 is consistent with all the national standards, including 4, 5, and 8 under the Magnson-Stevens Act. National standard 4 requires that conservation and management measures not discriminate between residents of different states and that allocations be fair and equitable, be reasonably calculated to promote conservation, and implemented in such a manner that no entity receive an excessive share of fishing privileges. The allocations in Amendment 64 are made based on gear sectors and do not result in the acquisition of any particular share of the privilege by any individual entity.

These allocations reflect historical gear shares of the Pacific cod annually harvested by vessels using hook-and-line or pot gear. As such, NMFS believes that these allocations reflect historical participation in the fishery, promote stability within the Pacific cod fishery,

and are fair, equitable, and calculated to promote conservation.

While considering economic efficiency in the utilization of fishery resources, national standard 5 requires that management measures not have economic allocation as their sole purpose. The goal of Amendment 64 is to stabilize the Pacific cod fixed-gear fishery in a way that preserves the historical character of the fishery. Hence, its purpose extends beyond economics to prevent the negative social impacts caused by over-utilization by fishing communities historically dependent on the resource, and ensuing impacts on the resource.

National standard 8 requires that management measures recognize the importance of fishery resources to fishing communities and provide for the sustained participation of such communities and to the extent practicable, minimize adverse economic impacts on such communities. By basing the allocations on historical harvests by the respective gear sectors, the Council intends the amendment to stabilize the historical character of the fishery and its dependent communities.

Comment 3. Amendment 64 defies the conservation and community goals of the Magnson-Stevens Act by prioritizing gear sectors that have higher bycatch rates and by laying the groundwork for a subsequent FMP amendment (the Council's proposed Amendment 67) to reduce the number of vessels eligible to fish for Pacific cod. These actions will disenfranchise smaller size vessels. By creating a limited allocation for pot vessels, Amendment 64 will increase effort in the Gulf of Alaska and in Alaska state waters by vessels displaced from the crab fishery by decreasing crab stocks. This will increase the potential for localized depletion inside the 3-mile limit and has already forced the Alaska State Board of Fisheries to establish a separate allocation and management plan for Pacific cod in State waters.

Response. NMFS disagrees. Amendment 64 neither prioritizes nor disenfranchises any gear sector. Rather, it establishes allocations based on historical shares of the Pacific cod harvest by the respective gear sectors. The intent of the amendment is to stabilize the fishery against increasing competition until such time as comprehensive rationalization is completed. As the authors of the comment acknowledge, their comment is directed more properly at the Council's upcoming Amendment 67, which would require area and gear endorsements for the fixed gear Pacific cod fishery as part of the License Limitation Program. Amendment 67 has not yet been submitted to NMFS for review. When it is submitted and NMFS determines it to be adequate for public review and comment, NMFS will initiate the public process that would more appropriately focus on the issue raised in comment 3.

The final rule makes no changes in the regulations as published in the proposed rule.

Closure

Hook-and-line catcher vessels and pot gear vessels over 60 feet LOA have already exceeded the allocations of the fixed gear Pacific cod TAC that this action establishes as directed fishing allowances for those gear sectors: 272 mt and 16,570 mt, respectively.

In accordance with § 679.20(a)(7)(i)(C) and (D), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the hook-and-line catcher vessel and pot gear vessel directed fishing allowances for Pacific cod in the BSAI have been exceeded. Therefore, the Regional Administrator is prohibiting directed fishing for Pacific cod by hook-and-line catcher vessels and pot gear vessels over 60 ft LOA in the BSAI.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an EA for this FMP amendment that discusses the impact on the environment as a result of this rule. A copy of this EA is available from the Council (see **ADDRESSES**).

In compliance with the RFA, NMFS prepared a supplementary FRFA consisting of the IRFA, the FRFA, and the preamble to this final rule. A summary of the issues addressed by the supplementary FRFA follows.

For purposes of the RFA, all catcher vessels fishing for Pacific cod using hook-and-line or pot gear are considered small businesses, with annual receipts of less than $3 million. Under upcoming Amendment 60 to the BSAI Groundfish FMP, approximately 330 catcher vessels would be authorized under the license limitation program (LLP) to participate in the Bering Sea Pacific cod hook-and-line or pot gear fishery. Of the 98 catcher-processor vessels potentially authorized under the LLP to fish for Pacific cod, approximately one-third could be considered small entities. Five of the ten shore-based plants and floating processors operating within Alaskan state waters and processing most of the Pacific cod harvested by hook-and-line or pot gear catcher vessels could be considered small businesses under RFA, processing less than 2 percent of the total shoreside landings of Pacific cod by catcher vessels in 1998. Other small entities impacted by Amendment 64 are the three Alaskan communities that are home to processing plants that process limited amounts of BSAI Pacific cod: King Cove, Egegik, and Kenai.

Amendment 64 allocates more Pacific cod to catcher vessels delivering to shore-based processors than such vessels have historically harvested, which will tend to benefit small entities. Conversely, the freezer longline fleet, with the highest proportion of large entities, will receive a smaller allocation to balance the increase given to catcher vessels.

Amendment 64 allocates a portion of the Pacific cod resource away from the longline catcher-processor fleet and moves it to the catcher vessels delivering to shore-based processors or motherships. Because the longline catcher-processor fleet comprises the highest number of large entities of any sector fishing off Alaska, this allocation tends to favor small entities. By implementing the allocations by gear sector without limiting the number of vessels in any gear sector that may enter the fishery, this action may have the effect of increasing competition among users. However, the Council at its April 2000 meeting took final action to mitigate the effect of this action on competition within gear sectors by recommending for approval by NMFS a proposed amendment to require gear and species endorsements on licenses of those who wish to participate in the fixed gear BSAI Pacific cod fishery.

The magnitude of the Amendment 64's impact cannot be conclusively determined with the data currently available. Most persons operating in the fishery impacted by the action are small entities given their expected annual gross revenues of less than $3 million, and revenues could potentially be decreased by more than 5 percent, but that depends on the level of catch that might be achieved in the absence of an allocation. Also, impacts of this action on potential revenues cannot be isolated from other factors, including price fluctuation, amount of effort exerted by latent permits, and such stock fluctuation as crab of alternative fisheries.

As with many allocation-based management measures, this action involves a percentage allocation of the TAC among competing groups of vessels. Under the final rule, vessels in each group primarily are small entities representing a tradeoff in terms of

impacts (i.e., some small entities could be negatively impacted and other positively impacted). The Council's preferred alternative will allocate more cod to catcher vessels delivering to shore based processors and motherships than they have historically harvested. That allocation will tend to benefit small entities. The freezer longline fleet, with the highest proportion of large entities, will receive a smaller allocation to balance the increase given to small catcher vessels.

A future action being considered by the Council may have mitigating effects to some degree. One of the points raised in opposition to the final rule is that considerable latent capacity exists in the pot fleet (many pot vessels are qualified under the LLP but to date have not participated to a great degree in the cod fisheries), and freezing that sectors' share of the cod quota will disadvantage those pot vessels that do participate significantly in the cod fishery. They will have potential competition for a relatively small quota from a relatively large number of qualified vessels. There are also longline vessels that represent potential latent capacity and could impact that sector in the same way, though the degree of that potential is relatively less for that sector. In any case, the Council has adopted a follow-up amendment that would create species and gear LLP endorsements for the cod fisheries, based on a minimum level of landings and years of participation. The intent of this amendment is to eliminate the latent capacity described above, and create a more stable operating environment for the remaining vessels in each of the fixed gear sectors.

September 1, 2000, is the scheduled opening date of the third season of the 2000 fixed-gear fishery for Pacific cod. If this rule implementing Amendment 64's allocations is not effective by that date, vessels using pot gear could continue to fish for Pacific cod and further erode traditional hook-and-line shares. A delay in the effectiveness of this rule beyond September 1, 2000, would unnecessarily jeopardize the stability of the fishery. It would be contrary to the public interest not to make both the allocations in this rule, and the revised specifications implementing those allocations, effective by September 1, 2000. Therefore, pursuant to authority at 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA (AA) finds good cause not to delay for 30 days the effective date of this action and makes this rule effective on September 1, 2000.

To date, in 2000, the pot gear fleet has harvested 20 percent of the directed fishing allowance for the fixed gear fleet, or 111 percent of the 2000 allocation that is authorized under Amendment 64. This action closes to further fishing in 2000 that sector of the pot gear fishery engaged in directed fishing for Pacific cod, with the exception of pot gear vessels under 60 ft LOA, which will be able to fish under the allocation set aside for hook-and-line catcher vessels and pot gear vessels under 60 ft LOA. This closure must be effective by the start of the third Pacific cod season on September 1, 2000, in order to prevent the further exceeding of Amendment 64's allocations. Providing prior notice and an opportunity for public comment on this closure is impracticable and contrary to the public interest, as further delay would result in further overharvest. Accordingly, the AA finds that there is good cause not to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B). Likewise, delaying the effectiveness of this closure beyond September 1, 2000, would allow vessels using pot gear to continue to fish for Pacific cod, further eroding traditional hook-and-line shares, and further exceeding the allocations in Amendment 64. Therefor, pursuant to authority at 5 U.S.C. 553(d)(3), the AA finds good cause not to delay for 30 days the effective date of this action and makes this closure effective on September 1, 2000. This action is required by § 679.20 and is exempt from review under E.O. 12866.

The President has directed Federal agencies to use plain language in their communication with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Alaska Regional Administrator (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 17, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679--FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq, 1801 et seq., and 3631 et seq.

2. In § 679.20, paragraph (a)(7)(i)(C) is redesignated as paragraph (a)(7)(i)(D), paragraph (a)(7)(ii)(B) is redesignated as paragraph (a)(7)(ii)(C), paragraph (a)(7)(iii) is removed, paragraph (a)(7)(iv) is redesignated as paragraph (a)(7)(iii), redesignated paragraphs (a)(7)(i)(D), (a)(7)(ii)(C), (a)(7)(iii)(A), and (a)(7)(iii)(C) and paragraph (b)(1)(v) are revised, and new paragraphs (a)(7)(i)(C) and (a)(7)(ii)(B) are added to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(7) * * *

(i) * * *

(C) *Allocations among vessels using hook-and-line or pot gear (Applicable through December 31, 2003).*(*1*) The Regional Administrator annually will estimate the amount of Pacific cod taken as incidental catch in directed fisheries for groundfish other than Pacific cod by vessels using hook-and-line or pot gear and deduct that amount from the portion of Pacific cod TAC annually allocated to hook-and-line or pot gear under paragraph (a)(7)(i)(A) of this section. The remainder will be further allocated as directed fishing allowances as follows:

(*i*) 80 percent to catcher/processor vessels using hook-and-line gear;

(*ii*) 0.3 percent to catcher vessels using hook-and-line gear;

(*iii*) 18.3 percent to vessels using pot gear; and

(*iv*) 1.4 percent to catcher vessels less than 60 ft LOA that use either hook-and-line or pot gear.

(*2*) Harvests of Pacific cod made by catcher vessels less than 60 ft LOA using pot gear will not accrue to the 1.4 percent allocation under paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section until vessels using pot gear have harvested the 18.3 percent allocated to all vessels using pot gear under paragraph (a)(7)(i)(C)(*1*)(*iii*) of this section.

(*3*) Harvests of Pacific cod made by catcher vessels less than 60 ft LOA using hook-and-line gear will not accrue to the 1.4 percent allocation under paragraph (a)(7)(i)(C)(*1*)(*iv*) of this section until catcher vessels using hook-and-line gear have harvested the 0.3 percent allocated to all catcher vessels using hook-and-line gear under

paragraph (a)(7)(i)(C)(*1*)(*ii*) of this section.

(D) The Regional Administrator may establish separate directed fishing allowances and prohibitions authorized under paragraph (d) of this section for vessels harvesting Pacific cod using trawl gear, jig gear, hook-and-line gear, or pot gear.

(ii) * * *

(B) *Reallocation among vessels using hook-and-line or pot gear.* If, during a fishing year, the Regional Administrator determines that catcher vessels using hook-and-line gear or vessels less than 60 ft LOA using hook-and-line or pot gear will not be able to harvest the directed fishing allowance of Pacific cod allocated to those vessels under paragraphs (a)(7)(i)(C)(*1*)(*ii*) or (a)(7)(i)(C)(*1*)(*iv*) of this section, NMFS may reallocate the projected unused amount of Pacific cod as a directed fishing allowance to catcher/processor vessels using hook-and-line gear through notification in the **Federal Register.**

(C) *Reallocation between vessels using trawl or non-trawl gear.* If, during a fishing year, the Regional Administrator determines that vessels using trawl gear, hook-and-line gear, pot gear or jig gear will not be able to harvest the entire amount of Pacific cod in the BSAI allocated to those vessels under paragraphs (a)(7)(i)(A), (a)(7)(i)(B) or (a)(7)(i)(C) of this section, NMFS may reallocate the projected unused amount of Pacific cod to vessels harvesting Pacific cod using the other gear type(s) through notification in the **Federal Register**, except as provided below:

(*1*) *Reallocation of TAC specified for jig gear.* On September 15 of each year, the Regional Administrator will reallocate any projected unused amount of Pacific cod in the BSAI allocated to vessels using jig gear only to vessels using hook-and-line or pot gear through notification in the **Federal Register**.

(*2*) *Reallocation of TAC to catcher/processor vessels using hook-and-line gear or vessels using pot gear.* Any unharvested amounts of Pacific cod TAC that are reallocated from vessels using trawl or jig gear to catcher/processor vessels using hook-and-line gear or vessels using pot gear to increase directed allowances established under paragraphs (a)(7)(i)(C)(*1*)(*i*) or (a)(7)(i)(C)(*1*)(*iii*) of this section, will be apportioned so that catcher/processor vessels using hook-and-line gear will receive 95 percent and vessels using pot gear will receive 5 percent of any such reallocation.

(iii) * * *

(A) *Time periods.* NMFS, after consultation with the Council, may divide the directed fishing allowances allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i)(C) of this section among the following three periods: January 1 through April 30, May 1 through August 31, and September 1 through December 31.

* * * * *

(C) *Unused seasonal allowances.* Any unused portion of a seasonal allowance of Pacific cod allocated to vessels using hook-and-line or pot gear under paragraph (a)(7)(i)(C) will be reallocated to the remaining seasons during the current fishing year in a manner determined by NMFS, after consultation with the Council.

* * * * *

(b) * * *

(1) * * *

(v) *Pacific cod.* Any amounts of the BSAI nonspecific reserve that are apportioned to Pacific cod as provided by paragraph (b)(1)(ii) of this section must be apportioned among vessels using jig, hook-and-line or pot, and trawl gear in the same proportion specified in paragraph (a)(7)(i) of this section, unless the Regional Administrator determines under paragraph (a)(7)(ii) of this section that vessels using a certain gear type will not be able to harvest the additional amount of Pacific cod. In this case, the nonspecific reserve will be apportioned to vessels using the other gear type(s).

* * * * *

[FR Doc. 00–21681 Filed 8–23–00; 8:45 am]

Billing Code: 3510–22–S

Proposed Rules

Federal Register
Vol. 65, No. 165
Thursday, August 24, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–227–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A319, A320, and A321 series airplanes. This proposal would require a revision to the Airplane Flight Manual; inspection to detect damage of the wiring and adjacent structure along the length of the fairing of the fuel boost pump; corrective actions, if necessary; and modification of the fuel pump wire and fairing. This action is necessary to prevent electrical arcing of the fuel boost pump wire, which could result in wing structural damage, fire, and/or fuel vapor explosion. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 25, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–227–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–227–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–227–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–227–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received numerous reports of severe electrical arcing of the fuel boost pump wires located under the wings on Airbus Model A319, A320, and A321 series airplanes. In many cases, the wing skin was damaged by the arcing, and, in one case, approximately two-thirds of the thickness of the wing skin had been eroded. The exact cause of the arcing is unknown, although reports have indicated that the wires could have been damaged from being pinched by the wing fairing during installation and/or chafed in service from vibration. Such electrical arcing of the fuel boost pump wire, if not corrected, could result in wing structural damage, fire, and/or fuel vapor explosion.

U.S. Type Certification of the Airplanes

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require:

- A revision of the FAA-approved Airplane Flight Manual to advise the flightcrew not to reset any tripped circuit breaker of a wing tank fuel boost pump.
- An initial inspection to detect damage of the wiring and adjacent structure along the length of the fairing of the fuel boost pump; conditional

inspections after any circuit breaker of a fuel boost pump is tripped; and corrective actions, if necessary.

• Modification of the fuel pump wire. The proposed AD also would require that operators report results of inspection findings to the FAA.

Cost Impact

The FAA estimates that 306 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision proposed by this AD on U.S. operators is estimated to be $18,360, or $60 per airplane.

It would take approximately 2 work hours per airplane to accomplish the proposed inspection (including time to remove the fairing), at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $36,720, or $120 per airplane.

Since the manufacturer has not yet developed a modification commensurate with the requirements of this proposal, the FAA is unable at this time to provide specific information as to the number of work hours or cost of parts that would be required to accomplish the proposed modification. The proposed compliance time of 18 months should provide ample time for the development, approval, and installation of an appropriate modification. As indicated earlier in this preamble, the FAA specifically invites the submission of comments and other data regarding this economic aspect of the proposal.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2000–NM–227–AD.

Applicability: All Model A319, A320, and A321 airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing of the fuel boost pump wire, which could result in wing structural damage, or fire and/or fuel vapor explosion, accomplish the following:

AFM Revision

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved airplane flight manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD into the AFM.

''FUEL SYSTEM

If a circuit breaker for any wing tank fuel boost pump is tripped, do not reset.''

Inspection

(b) Within 90 days after the effective date of this AD: For each fuel boost pump, remove the fairing located on the lower wing skin and perform a detailed visual inspection of the wiring and the adjacent structure along the length of the fairing. Inspect to detect damage to the wires including chafed, pinched, or melted wires, and any signs of arcing damage to the structure. When replacing the fairing following the inspection, take care not to pinch or otherwise damage the wiring of the fuel boost pumps; incorrect replacement of the fairing could cause damage to the wiring.

(1) If any damage to the wire is detected: Prior to further flight, replace the wire with new wire in accordance with the manufacturer's Aircraft Wiring Manual, Standard Practices, Chapter 20. Submit a report at the time specified and in accordance with paragraph (d) of this AD.

(2) If any arcing damage to the structure is detected: Prior to further flight, repair the damaged structure in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD. Submit a report at the time specified and in accordance with paragraph (d) of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(c) As of the effective date of this AD: For any fuel boost pump on which the circuit breaker of the pump has tripped, prior to further use of that pump, accomplish the inspection and applicable corrective actions specified by paragraph (b) of this AD.

Reporting Requirement

(d) If any damage is detected during any inspection required by paragraphs (b) and (c) of this AD: Within 10 days after accomplishing that inspection, submit a report of the inspection findings to the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1149. The report must include a description of the damage found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been

approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Modification

(e) Within 18 months after the effective date of this AD, modify the fuel pump wire and fairing, in accordance with a method approved by the Manager, International Branch, ANM–116.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 18, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–21465 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–06–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models A36, B36TC, and 58 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Corporation (Raytheon) Beech Models A36, B36TC, and 58 airplanes. The proposed AD would require you to inspect for misrouted rudder control cables; replace any worn or damaged guard pins; replace any pulley brackets that are damaged or worn; and replace any misrouted rudder control cables. Three reports of misrouted cables prompted the proposed action. The actions specified by this proposed AD are intended to correct the misrouted rudder control cable and consequent guard pin wear or fraying of the cables with loss of rudder control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 22, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–06–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may inspect comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get the service information referenced in the proposed AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; on the Internet at <http://www.raytheon.com/rac/servinfo/27–3265.pdf>. This file is in Adobe Portable Document Format. The Acrobat Reader is available at <http://www.adobe.com/>. You may examine this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD?

We invite your comments on the proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

Are there any specific portions of the AD I should pay attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might necessitate a need to modify the proposed rule. You may examine all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

The FAA is reexamining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/.

How can I be sure FAA receives my comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–06–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD?

The FAA has received three reports of instances of misrouted cables. In one instance, a report noted complete separation of the rudder cable. In another instance, a report noted fraying of the rudder cable. Raytheon has issued a mandatory service bulletin affecting these model airplanes:

Beech Model A36—serial numbers E–2519 through E–3140

Beech Model B36TC—serial numbers EA–501 through EA–608

Beech Model 58—serial numbers TH–1576 through TH–1838

What are the consequences if the condition is not corrected?

This condition could result in guard pin wear and separation or fraying of the cables with loss of rudder control.

Relevant Service Information

What service information applies to this subject?

Raytheon has issued Mandatory Service Bulletin SB 27–3265, dated January 2000.

What are the provisions of this service bulletin?

The service bulletin describes procedures for inspecting for proper routing of the rudder control assemblies.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—the unsafe condition referenced in this document exists or could develop on other Raytheon Beech Models A36, B36TC, and 58 airplanes of the same type design;

—these airplanes should have the actions specified in the above service bulletin incorporated; and

—the FAA should take AD action in order to correct this unsafe condition.

What does this proposed AD require?

This proposed AD would require you to:

—inspect for misrouted rudder control cables;

—replace any worn or damaged guard pins;

—replace any pulley brackets that are damaged or worn; and

—replace any misrouted rudder control cables.

What are the differences between the service bulletin and the proposed AD?

Raytheon Aircraft requires you to inspect and, if necessary, replace guard pins, pulley brackets, and rudder control cables at the next scheduled inspection after receipt of the Service Bulletin, but no later than the next 50 flight hours. We propose a requirement that you inspect and, if necessary, replace guard pins, pulley brackets, and rudder control cables within the next 50 hours time-inservice (TIS) of operation after the effective date of the proposed AD. We believe that 50 hours TIS will give the owners/operators of the affected airplanes enough time to have the proposed actions accomplished without compromising the safety of the airplanes.

Cost Impact

How many airplanes does this proposed AD impact?

We estimate that the proposed AD would affect 842 airplanes in the U.S. registry.

What is the cost impact of the proposed action for the affected airplanes on the U.S. Register?

We estimate that it would take approximately 1 workhour per airplane to accomplish the proposed inspection, at an average labor rate of $60 an hour. Based on the figures presented above, we estimate that the total cost impact of the proposed inspection on U.S. operators is $50,520, or $60 per airplane.

We estimate that it would take approximately 4 workhours per airplane to accomplish the proposed rudder control replacement, at an average labor rate of $60 an hour. Based on the cost factors presented above, we estimate that the total cost impact of the proposed rudder control replacement on U.S. operators is $240 per airplane.

We estimate that it would take approximately 2 workhours per airplane to accomplish the proposed rudder pulley bracket replacement, at an average labor rate of $60 an hour. Raytheon will provide parts at no cost to the owners/operators of the affected airplanes. Based on the cost factors presented above, we estimate that the total cost impact of the proposed rudder pulley bracket replacement on U.S. operators is $120 per airplane.

The manufacturer will also allow warranty credit for labor to the extent noted in the service bulletin.

Regulatory Impact

Does this proposed AD impact relations between Federal and State governments?

The proposed regulations would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have determined that this proposed rule would not have federalism implications under Executive Order 13132.

Does this proposed AD involve a significant rule or regulatory action?

For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if put into effect, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company:

Docket No. 2000–CE–06–AD.

(a) *What airplanes are affected by this AD?* The following Beech Models and serial number airplanes, certified in any category:

Model	Serial Nos.
A36	E–2519 through E–3140.
B36TC	EA–501 through EA–608.
58	TH–1576 through TH–1838.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct the misrouted rudder control cable and consequent guard pin wear or fraying of the cables with loss of rudder control.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance times	Procedures
(1) Inspect rudder control cables that are routed around the pulley and through the brackets.	Inspect within the next 50 hours time-in-service after the effective date of this AD, and accomplish all follow-on actions, such as replacements before further flight after the inspection.	Accomplish this inspection in accordance with the ACCOMPLISHMENT INSTRUCTIONS paragraph of Raytheon Mandatory Service Bulletin SB 27–3265, Issued: January 2000, and the applicable airplane Maintenance Manual or Shop Manual.
(i) Replace any worn or damaged guard pins. (ii) Inspect pulley brackets for wear and damage, and replace as necessary. (iii) If rudder cables are routed properly, check the airplane log book to determine if a misrouted control cable was detected during maintenance and the misrouting was corrected.		
(2) If a misrouting has been recorded or found during this inspection, install replacement rudder control cables in accordance with the following:	Before further flight after the inspection	Accomplish this action in accordance with the ACCOMPLISHMENT INSTRUCTIONS paragraph of Raytheon Mandatory Service Bulletin SB 27–3265, Issued: January 2000, and the applicable airplane Maintenance Manual or Shop Manual.
(i) Apply corrosion preventive compounds, as necessary, to provide corrosion protection. (ii) Install rudder control cables. (iii) Adjust rudder control cables to correct tension and adjust control surface travel. (iv) Perform an operational checkout of the flight control system to ensure proper operation of installed rudder control cables, pulley brackets, guard pins and attaching hardware.		

(e) *Can I comply with this AD in any other way?*

You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul C. DeVore, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get the service information referenced in the AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140; on the Internet at <http://www.raytheon.com/rac/servinfo/27–3265.pdf>. This file is in Adobe Portable Document Format. The Acrobat Reader is available at <http://www.adobe.com/>. You may examine this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 14, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–21617 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 7 Tracking No. 113–1113; FRL–6857–5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a statewide NO_X rule to reduce the emissions of nitrogen oxides (NO_X) and establish a NO_X emissions trading program for the state of Missouri. This rule is a critical element in the state's plan to attain the ozone standard in the St. Louis ozone nonattainment area.

DATES: Comments must be received on or before October 23, 2000.

ADDRESSES: Written comments should be mailed to Kim Johnson, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the state submittal are available at the following address for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Kim Johnson at (913) 551–7975.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we, us, or our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is being addressed in this document?

Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

This rule is being parallel processed. Parallel processing means that EPA will propose approval of a rule before it is final (or in this case legally binding) under state law. Under parallel processing, EPA proposes action on a state submission before it is final or effective, and will take final action on its proposal if the final state submission is substantially unchanged from the submission on which the proposal is based, or if significant changes in the final state submission are anticipated and adequately described in EPA's proposal.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

We are proposing to approve, as an amendment to Missouri's SIP, rule 10 CSR 10–6.350, ''Emissions Limitations and Emissions Trading of Oxides of Nitrogen,'' submitted to us on June 29, 2000. The basis for our proposed approval of the rule is described in this document, and in more detail in the technical support document (TSD) prepared for this proposal. The TSD is available at the address identified above. Because the rule is not yet effective under state law, the submittal from Missouri requested that we propose approval of the regulation by parallel processing.

The rule requires reductions in NO_X emissions by establishing NO_X emissions limitations for large electric generating units (EGU) which includes any EGU with a nameplate capacity greater than 25 megawatts across the state, beginning May 1, 2003. EGUs located in the eastern third of the state are limited to an emission rate of 0.25 lbs. NO_X per million British thermal units per hour (mmBtu) of heat input during the control period. The EGUs located in the western two-thirds of the state are limited to the less stringent rate of 0.35 lbs. NO_X mmBtu of heat input during the control period. The control period begins on May 1 and ends on September 30 of the same calendar year. The control period is limited to this period because this is the time of year when ozone formation is most likely to occur at unhealthful levels.

The rule also establishes a trading program for the state of Missouri to allow the affected EGUs' flexibility in meeting the requirements of this rule. The trading program establishes allowances for each affected NO_X unit for each control period. The system then tracks the balance of the allowances for each unit. At the end of the control period, units with remaining allowances can either bank the allowances for future years or trade the allowances to units with a deficit (overdraft accounts.)

Other features of the trading program include the following:

1. the availability of early reduction credits for affected NO_X units which reduce their NO_X emissions rate prior to May 1, 2003;

2. an individual EGU opt-in provision which allows EGU units that are not initially affected by the rule to opt in to the NO_X trading program, thereby subjecting them to the rule, including the trading program; and

3. geographic flow control to discourage the flow of allowances from west to east and to encourage more reductions in the vicinity of the St. Louis area.

The rule specifies appropriate compliance methods, reporting and recordkeeping sufficient to determine compliance, referencing the requirements of 40 CFR part 75 (EPA's monitoring requirements for acid rain sources). We believe that this portion of the rule meets the applicable enforceability requirements.

This rule is a critical element in the state's plan to attain the ozone standard in the St. Louis ozone nonattainment area. The St. Louis ozone nonattainment area includes Franklin, Jefferson, St. Charles, and St. Louis counties and St. Louis City in Missouri; and Madison, Monroe, and St. Clair counties in Illinois. As part of the control strategy for the attainment of the ozone standard in the St. Louis area, Missouri and Illinois included NO_X reductions for certain sources throughout the two states.

Full approval of the ozone attainment demonstration for St. Louis is dependent upon the adoption of regional NO_X emissions control regulations, sufficient to achieve attainment of the ozone standard based on the attainment demonstration. EPA's proposal on the attainment demonstration is in 65 FR 20404, April 17, 2000. That proposal includes a detailed discussion of the role of regional NO_X emission reductions in attainment of the ozone standard in the St. Louis area. The target levels established in the NO_X rule, described

above, are consistent with the levels in the attainment demonstration.

The state has made a commitment to provide an annual demonstration to us that the total actual NO_X emissions, from affected utilities, remain below the inventory projections used in the St. Louis attainment demonstration. The state has also committed to continue to evaluate the effects of this rule on the monitored ozone levels in the St. Louis ozone nonattainment area, and make any necessary adjustments based on the monitoring data.

Because the attainment demonstration assumes that specific NO_X emission reductions will occur as a result of the rule, we believe it is critical that the state closely monitor progress toward achieving the reductions, and take corrective action if necessary to ensure the reductions are realized. This corrective action could include making modifications to the rule or taking further action to address the NO_X emissions reduction shortfall if any occurs.

The state is committed to evaluating the effectiveness of the rule in achieving necessary NO_X reductions, and we intend to review the annual demonstration submitted by Missouri. If necessary, we may exercise our authorities under sections 110 and 179 of the Act to require further action to remedy shortfalls, if any, in the NO_X reduction program, when it is implemented.

For clarification, our evaluation of the statewide NO_X rule is not related to the obligations which Missouri may subsequently have under EPA's regional NO_X reduction rule (the NO_X SIP call). That rule, explained in more detail in our April 17, 2000, proposal on the attainment demonstration, requires that certain states develop regional NO_X controls to address contributions to downwind nonattainment of the ozone standard in the eastern portion of the country. In response to a recent judicial remand of the SIP call as it relates to Missouri, EPA intends to undertake rulemaking to establish regional NO_X requirements for a portion of Missouri. When that rulemaking is completed, we anticipate that it will establish separate NO_X reduction requirements to address contributions by Missouri sources to ozone nonattainment in other areas. The state would then be required to take subsequent action, pursuant to the NO_X SIP call, to ensure NO_X emissions address long-range transport, and we would then take separate rulemaking action on Missouri's response to the NO_X SIP call.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the criteria in 40 CFR part 51, appendix V for completeness of SIP revisions submitted for parallel processing. In addition, as explained above and in more detail in the TSD which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110, part D of Title I, and implementing regulations.

What action is EPA taking?

We are proposing to approve, as an amendment to Missouri's SIP, rule 10 CSR 10–6.350, ''Emissions Limitations and Emissions Trading of Oxides of Nitrogen.'' We are processing this as a proposal action through parallel processing because this rule is not yet effective under state law. We anticipate that the final effective rule will be the same as the rule on which this proposal is based.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. We have complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the Executive Order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 14, 2000.

Michael J. Sanderson,

Acting Regional Administrator, Region 7.

[FR Doc. 00–21671 Filed 8–23–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6856–7]

National Priorities List for Uncontrolled Hazardous Waste Sites; Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule proposes to add two new sites to the NPL; both to the General Superfund Section of the NPL. The two sites are the Alabama Plating Company, Inc. site (located in Vincent, Alabama) and the Malone Service Company, Inc. site (located in Texas City, Texas).

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before October 23, 2000.

ADDRESSES: *By Postal Mail:* Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5202G); 1200 Pennsylvania Avenue NW; Washington, DC 20460.

By Express Mail or Courier: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to superfund.docket@epa.gov. E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW; Washington, DC 20460; or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' ''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases (42 U.S.C. 9601(23)).

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA, section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of the sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as a appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on July 27, 2000 (65 FR 46096).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions. * * *'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.5). During

the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are Sites Removed from the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of August 15, 2000, the Agency has deleted 216 sites from the NPL.

H. Can Portions of Sites be Deleted from the NPL as they are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of August 15, 2000, EPA has deleted portions of 19 sites.

I. What is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) The site qualifies for deletion from the NPL. As of August 15, 2000, there are a total of 698 sites on the CCL. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to this Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in dockets located both at EPA Headquarters in Washington, DC and in the Region 4 and 6 offices (as appropriate).

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Region 4 and Region 6 dockets (as appropriate) after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets is as follows:

Joellen O'Neill, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed site; a Documentation Record for the site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional dockets for this rule contain all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas,* 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS

documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

With today's proposed rule, EPA is proposing to add two new sites to the NPL; both to the General Superfund Section of the NPL. The sites are being proposed based on HRS scores of 28.50 or above. The two sites are the Alabama Plating Company, Inc. site (located in Vincent, Alabama) and the Malone Service Company, Inc. site (located in Texas City, Texas).

B. Status of NPL

With this proposal of two new sites, there are now 59 sites proposed and awaiting final agency action, 53 in the General Superfund Section and 6 in the Federal Facilities Section. There are currently 1,235 final sites; 1,076 in the General Superfund Section and 159 in the Federal Facilities Section. Final and proposed sites now total 1,294. (These numbers reflect the status of sites as of August 15, 2000. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any

proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

No. While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

VII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to This Proposed Rule?

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

IX. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XI. Executive Orders on Federalism

What Are the Executive Orders on Federalism and Are They Applicable to This Proposed Rule?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

XII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Proposed Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; Executive Order 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Executive Order 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: August 17, 2000.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 00–21524 Filed 8–23–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 99–316; FCC 99–307]

Shortening Notice Period for Changes in Participation in NECA's Access Tariffs

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document seeks comment on the National Exchange Carrier Association, Inc.'s (NECA's) proposal to extend the deadline by which carriers must notify NECA of changes in their participation in NECA's access tariffs. Specifically, the carrier election deadline would be changed from December 31 of the previous year to March 1 of the tariff year. NECA asserts that, because of streamlined tariff notification periods and electronic data collection methods, it no longer requires six months advance notice of tariff participation changes. Moving the notice deadline from December to 31 of the previous year to March 1 of the tariff year will provide carriers more time in which to make their tariff participation decisions.

DATES: Comments are due on or before September 8, 2000, and reply comments are due on or before September 18, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, (202) 418–1520.

SUPPLEMENTARY INFORMATION: Under 47 CFR 69.3, NECA is responsible for filing an access service tariff as agent for all telephone companies that participate in the association tariff. The association tariff is to be filed with a scheduled effective date of July 1. To provide NECA with sufficient notice, carriers are currently required to notify NECA of any change in their association tariff participation by December 31 of the year preceding the filing of the tariff.

In 1997 the Commission streamlined its tariff filing rules, allowing carriers to file their annual access tariffs on 15 days notice, rather than on 90 days notice. 63 FR 13132, March 18, 1998. The streamlined notice requirement applies to NECA's association access service tariff, allowing NECA to file the tariff on June 16, rather than on April 2, for an effective date of July 1. In addition to the streamlined notice period, NECA now employs electronic data collection and processing routines that were not in use when 47 CFR 69.3 was adopted. These more efficient data collection techniques significantly reduce the time required to assemble and analyze data for NECA's tariff filing. According to NECA, the tariff streamlining rules and improvements in data collection management eliminate the need for carriers to provide six months advance notice to NECA of planned tariff participation changes. Therefore, NECA filed a petition for rulemaking seeking to change the carrier notification date from December 31 of the previous year to March 1 of the tariff year.

We agree with NECA that changes in tariff notification periods and

advancements in data collection and processing methods may warrant a shorter timeframe for carriers to provide notice of tariff participation changes. In addition, as NECA noted in its petition, shorter notice periods will not disadvantage NECA and may help smaller companies make better-informed decisions regarding tariff participation. For instance, because the deadline by which NECA must file proposed revisions to its average schedule formulas is December 31, companies that rely on these formulas to compute interstate access compensation will have more time to analyze the proposed revisions before deciding whether to participate in NECA's access tariff.

Therefore, we propose to amend 47 CFR part 69 to allow carriers until March 1 of each tariff year to notify NECA of any changes in tariff participation. We seek comment on this proposed change.

In the alternative, NECA suggested that the Commission eliminate its requirement that companies notify NECA of changes in their tariff participation. According to NECA, elimination of this requirement will ease the Commission's administrative burden of reviewing applications for special permission filed by carriers that seek waiver of the tariff election deadline. NECA also noted that the Commission's objective of providing NECA ample time to develop annual access rates may be better served by allowing the association to develop internal procedures, which could be adjusted to meet special circumstances. We also seek comment on this proposal.

Ex Parte Presentations

This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with 47 CFR 1.1206(b). *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. *See* 47 CFR 1.1206(b)(2). Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

Initial Paperwork Reduction Act Analysis

This Notice of Proposed Rulemaking (''NPRM'') contains a proposed information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (''OMB'') to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Public and agency comments must be filed by the same filing deadlines as comments on this NPRM; OMB comments are due 60 days from the date of publication of this NPRM in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Initial Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**. 5 U.S.C. 603(a).

Need for and Objectives of the Proposed Rules

NECA has asserted that changes in tariff notification periods and advancements in data collection and processing methods have facilitated NECA's ability to prepare association tariffs. Therefore, NECA can receive notifications from carriers changing the status of their association tariff participation closer to the tariff filing deadline. At NECA's request, the Commission is proposing to amend its rules to extend the deadline by which carriers must notify NECA of changes in association tariff participation. Specifically, the notification deadline would be changed from December 31 of the preceding year to March 1 of the tariff year. This extension of the notification deadline will provide carriers additional time to determine their tariff participation status, thus allowing them to make more informed tariff participation decisions.

Legal Basis

The proposed action is authorized under sections 1, 4(i), 4(j), 201–205, and 303 of the Communications Act of 1934, as amended. 47 U.S.C. 151, 154(i), 154(j), 201–205, and 303.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA requires that an initial regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). 15 U.S.C. 632.

In this IRFA, we consider the potential impact of the NPRM on all local exchange carriers (''LECs'') that could consider participating in NECA's association tariffs. Neither the Commission nor the SBA has developed a definition for small LECs. The closest applicable definition under the SBA rules is for Standard Industrial Classification (''SIC'') category 4813, telephone communications companies other than radiotelephone (wireless) companies. 13 CFR 121.201. For this category, the SBA has defined a small business to be a small entity having no more than 1,500 employees. 13 CFR 121.201.

We have included small incumbent LECs in this RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 5 U.S.C. 601(3). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 61 FR 45476, August 29, 1996. Although we have included small incumbent LECs in this RFA analysis, we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator: Interstate Service Providers Report (''Locator'').* This report was compiled using information from Telecommunications Relay Service (''TRS'') fund worksheets filed by carriers, including, *inter alia*, LECs, competitive local exchange carriers, interexchange carriers, competitive access providers, satellite service providers, wireless telephony providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

There are two principal providers of local telephone service; incumbent LECs and competing local service providers. However, under 47 CFR part 69, participation in NECA's access service tariffs is limited to incumbent LECs, therefore the proposed rule changes will not affect competing local service providers. 47 CFR 69.2(hh). According to the most recent *Locator* data, 1,410 filers identified themselves as incumbent LECs. Data set forth in the FCC *Preliminary Statistics of Communications Common Carriers* (''*SOCC*'') lists 32 incumbent LECs that have more than 1,500 employees. We do not have data specifying the number of these carriers that are either dominant in their field of operations or are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,378 incumbent LECs are small entities that may be affected by the proposed rules, if adopted.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

An Initial Paperwork Reduction Act analysis is contained in the NPRM. This NPRM seeks comment on a proposed extension of the date by which carriers must notify NECA of changes in participation in association tariffs. Under the current rules this notification must be provided six months prior to the effective date of the tariff, by December 31 of the preceding year. The Commission proposes to allow carriers until March 1 of the tariff year to provide the required notification to NECA. The NPRM also seeks comment on an alternative proposal to eliminate the Commission notification rule and allow NECA to adopt internal procedures governing tariff participation notification.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The rule amendments we propose in the NPRM are designed to assist all carriers in making their association tariff participation elections. The proposed extension of the notification date from December 31 to March 1 may particularly benefit smaller carriers that rely on average schedule formulas to compute interstate access compensation, because NECA is required to file proposed revisions to these schedules by December 31. The extension of the tariff election deadline will provide carriers more time to analyze NECA's proposed revisions before making tariff participation decisions. We seek comment on our tentative conclusions and proposals, and on additional actions we might take in this regard.

Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

There are no federal rules that may duplicate, overlap, or conflict with the proposed rules.

Filing of Comments and Reply Comments

Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before September 8, 2000, and reply comments on or before September 18, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (''ECFS'') or by filing paper copies.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Only one copy of electronically-filed comments must be submitted.

Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW–B204, Washington, D.C. 20554.

Parties who choose to file by paper should also submit their comments on diskette. The diskette should be submitted to: Wanda Harris, Federal Communications Commission, Common Carrier Bureau, Competitive Pricing Division, 445 12th Street, S.W., Fifth Floor, Washington, D.C. 20554. The submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a

cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, S.W., Room CY–A257, Washington, D.C. 20554.

Ordering Clauses

Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, and 303, *Notice Is Hereby Given* of the rulemaking described and that *Comment Is Sought* on those issues.

The Commission's Office of Public Affairs, Reference Operations Division, *Shall Send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 47 CFR Part 69

Communications common carriers, Tariffs.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–21578 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1838, MM Docket No. 00–142, RM–9923]

Radio Broadcasting Services; Hawthorne, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Campbell River Broadcasting, LLC, seeking the allotment of Channel 254C1 to Hawthorne, NV, as the community's second local FM channel. Channel 254C1 can be allotted to Hawthorne in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 38–31–29 NL; 118–37–25 WL. On the Commission's own motion, the *Notice of Proposed Rule Making* also proposes to delete unoccupied and unapplied-for Channel 228A at Hawthorne unless an expression of interest in activating the channel is received by the initial comment period.

DATES: Comments must be filed on or before October 2, 2000, and reply comments on or before October 17, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dan J. Alpert, 2120 N. 21st Road, Suite 400, Arlington, VA 22201 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–142, adopted August 2, 2000, and released August 11, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–21577 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1758, MM Docket No. 00–134, RM–9922]

Radio Broadcasting Services; Brighton, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Linda A. Davidson seeking the allotment of Channel 270A to Brighton, VT, as the community's first local aural service. Channel 270A can be allotted to Brighton in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) northwest, at coordinates 44–51–50 NL; 71–57–26 WL, to avoid a short-spacing to Station WPOR–FM, Channel 270B, Portland, ME. Channel 270A at Brighton, at the reference coordinates, will still result in short-spacings to vacant Channel 270A, Victoriaville, Quebec, and vacant Channel 270A at Bedford, Quebec, Canada. Since Brighton is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence in the allotment, as a specially negotiated short-spaced allotment, must be received from the Canadian government.

DATES: Comments must be filed on or before September 25, 2000, and reply comments on or before October 10, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Linda A. Davidson, 2134 Oak Street, Unit C, Santa Monica, CA 90405 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–134, adopted July 26, 2000, and released August 4, 2000. The full text of

this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–21576 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1836, MM Docket No. 00–141, RM–9930]

Radio Broadcasting Services; Pentwater, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Garry Zack seeking the allotment of Channel 280A to Pentwater, MI, as the community's third local FM service. Channel 280A can be allotted to Pentwater in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 43–46–30 NL; 86–26–24 WL. Canadian concurrence in the allotment must be obtained since Pentwater is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before October 2, 2000, and reply comments on or before October 17, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert L. Olender, Koerner & Olender, P.C., 5809 Nicholson Lane, Suite 124, North Bethesda, MD 20852 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–141, adopted August 2, 2000, and released August 11, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–21574 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1837, MM Docket No. 00–143, RM–9931]

Radio Broadcasting Services; Ludington, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Garry Zack seeking the allotment of Channel 242A to Ludington, MI, as the community's third local aural and second local commercial FM service. Channel 242A can be allotted to Ludington in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) south, at coordinates 43–54–30 NL; 86–26–10 WL, to avoid a short-spacing to Station WLXT, Channel 242C1, Petosky, Michigan. Canadian concurrence in the allotment must be obtained since Ludington is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before October 2, 2000, and reply comments on or before October 17, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert L. Olender, Koerner & Olender, P.C., 5809 Nicholson Lane, Suite 124, North Bethesda, MD 20852 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–143, adopted August 2, 2000, and released August 11, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–21573 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1839, MM Docket No. 00–144, RM–9925]

Radio Broadcasting Services; Groveton, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Linda Davidson seeking the allotment of Channel 268A to Groveton, NH, as the community's second local FM service. Channel 268A can be allotted to Groveton in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.2 kilometers (4.4 miles) northeast, at coordinates 44–37–43 NL; 71–25–55 WL, to avoid a short-spacing to Station WYKR–FM, Channel 267A, Haverhill, NH, and Station WBHG, Channel 268A, Meredith, NH. Canadian concurrence in the allotment must be obtained since Groveton is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before October 2, 2000, and reply comments on or before October 17, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Linda A. Davidson, 2134 Oak St., Unit C, Santa Monica, CA 90405 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–144, adopted August 2, 2000, and released August 11, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–21572 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF92; RIN 1018–AF95

Endangered and Threatened Wildlife and Plants; Extension of Comment Periods and Notice of Availability of Draft Economic Analyses on Proposed Critical Habitat Determinations for the Spectacled Eider and Steller's Eider

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period and notice of availability of draft economic analyses.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of draft economic analyses of the proposed designation of critical habitat for the spectacled eider (*Somateria fischeri*) and the Alaska-breeding population of the Steller's eider (*Polysticta stelleri*). We also provide notice that we are extending the comment periods on the proposals to allow all interested parties to submit written comments on the proposals and on the draft economic analyses. Comments previously submitted need not be resubmitted as they will be incorporated into the public records and will be fully considered in the final rule.

DATES: The comment periods for the proposed rules concerning spectacled eiders and Steller's eiders, which previously closed on August 31, 2000, now close on September 25, 2000. Comments from all interested parties must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on these proposals.

ADDRESSES: Copies of the draft economic analyses are available on the Internet at ''www.r7.fws.gov/es/te.html'' or by contacting the U.S. Fish and Wildlife Service at the appropriate field office listed below. Submit written data or comments on the spectacled eider to the Field Supervisor, Ecological Services Field Office, Anchorage, U.S. Fish and Wildlife Service, 605 W. 4th Ave. Rm G–62, Anchorage, AK 99501; fax: 907/271–2786. Submit written data or comments on the Steller's eider to Ted Swem, Northern Alaska Ecological Services, 101 12th Ave., Rm 110, Fairbanks, AK 99701; fax 907/456–0208.

FOR FURTHER INFORMATION CONTACT: For the proposed rule and economic analysis concerning spectacled eiders, contact Ann G. Rappoport, Field Supervisor, Ecological Services Field Office, Anchorage at the above address, phone: 907/271–2787 or toll-free 800/272–4174; fax: 907/271–2786. For the proposed rule and economic analysis concerning Steller's eiders, contact Ted Swem, Endangered Species Branch, at Northern Alaska Ecological Services at the above address, phone: 907/456–0441; fax: 907/456–0208.

SUPPLEMENTARY INFORMATION:

Background

The spectacled eider is a large seaduck found in marine waters and coastal areas from the Nushagak Peninsula of southwestern Alaska north to Barrow and east nearly to the Canadian Border. The species is threatened by habitat degradation, lead poisoning, increased predation rates, and hunting and other human disturbance. The Steller's eider is a seaduck found in coastal and marine waters from the eastern Aleutian Islands around the western and northern coasts of Alaska to the Canada border. The Alaska-breeding population of this species is thought to have decreased significantly, but the causes of the suspected decline are unknown. On February 8, 2000, the Service published a proposed rule (65 FR 6114) to designate critical habitat for the spectacled eider, and on March 13, 2000, the Service published a proposed rule (65 FR 13262) to designate critical habitat for the Alaska-breeding population of the Steller's eider.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available and after taking into consideration the economic impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. Based upon the previously published proposals to designate critical habitat for the spectacled eider and Steller's eider and comments previously received during the comment periods, we have conducted a draft economic analysis of the proposed critical habitat designations.

The comment period for the proposed rule designating critical habitat for spectacled eiders originally closed on May 8, 2000. The comment period for the proposed rule designating critical habitat for Steller's eiders originally closed on May 12, 2000. We subsequently extended the comment periods for both species to June 30, 2000, in response to concerns expressed by several parties that the original comment periods did not allow adequate time for review and comment by affected individuals and communities. Additionally, we anticipated that the comment periods for the economic analyses associated with the proposed critical habitat designations would be open during June 2000, and we wished to solicit comments on the proposed rules and their respective economic analyses simultaneously. The development of the economic analyses for the proposed critical habitat designations was unexpectedly delayed, and we subsequently extended the comment periods through August 31, 2000, with the expectation that the economic analyses would be available by August 1, 2000.

We solicit comments on the draft economic analysis as described in this notice, as well as any other aspect of the proposed designation of critical habitat for the spectacled eider and Steller's eider. Our final determination on the proposed critical habitat will take into consideration comments and any additional information received by the date specified above. All previous comments and information submitted during the comment period need not be resubmitted. The comment period is extended to September 25, 2000. Written comments may be submitted to the appropriate Service office as specified in the **ADDRESSES** section.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In certain circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The deadline for requesting public hearings on the proposed rule regarding critical habitat for the spectacled eider was March 24, 2000. The deadline for requesting public hearings for the proposed rule regarding critical habitat for Steller's eider was April 27, 2000. We have not extended these deadlines. In order to be considered valid, requests for public hearings must have been submitted in writing and received at the appropriate office by the relevant deadline.

Author

The primary author of this notice is Susan Detwiler, U.S. Fish and Wildlife Service, Division of Endangered Species, 1011 E. Tudor Rd., Anchorage, AK 99503.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 16, 2000.

Gary Edwards,

Acting Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 00–21589 Filed 8–23–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding and Commencement of Status Review for a Petition To List the Western Sage Grouse in Washington as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce a 90-day finding on a petition to list the western sage grouse (*Centrocercus urophasianus phaios*) in Washington as an endangered or threatened species pursuant to the Endangered Species Act of 1973, as amended. We find that the petition presents substantial scientific or commercial information indicating that listing western sage grouse in Washington, as a distinct population segment, may be warranted. We are initiating a status review to determine if listing this population segment is warranted.

DATES: The finding announced in this document was made August 18, 2000. To be considered in the 12-month finding for this petition, information and comments should be submitted to us by October 23, 2000.

ADDRESSES: Information, comments, or questions concerning this petition should be submitted to the Supervisor, Upper Columbia River Basin Field Office, U.S. Fish and Wildlife Service, 11103 E. Montgomery Drive, Spokane, Washington 99206. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Chris Warren (See **ADDRESSES** section) or telephone (509) 893–8020.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition,

and the finding is to be published promptly in the **Federal Register**. If we find that substantial information was presented, we are required to promptly commence a review of the status of the species involved, if one has not already been initiated under our internal candidate assessment process.

The processing of this petition conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. The highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being. Second priority is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of this 90-day petition finding is a fourth priority, and is being completed in accordance with the current Listing Priority Guidance.

We have made a 90-day finding on a petition to list the western sage grouse (*Centrocercus urophasianus phaios*) in Washington. The petition, dated May 14, 1999, was submitted by the Northwest Ecosystem Alliance and the Biodiversity Legal Foundation, and was received by us on May 28, 1999. The petition requested the listing of western sage grouse in Washington as threatened or endangered. The letter clearly identified itself as a petition and contained the names, signatures, and addresses of the petitioners. Accompanying the petition was supporting information relating to the taxonomy, ecology, and past and present distribution of the species, as well as the threats faced by the western sage grouse in Washington.

The petitioners requested listing for the Washington population of western sage grouse and not the species rangewide. We consider this request appropriate because, although we do not base listing decisions on political subdivisions except international boundaries, we can consider a population of a vertebrate species or subspecies as a listable entity under the Act if the population is recognized as a distinct population segment (DPS) (61 FR 4722). We can also expand the scope of our review of petitions to the species rangewide, should expansion be appropriate based on our knowledge of the available information.

The information regarding the description and natural history of sage grouse, below, has been condensed from the following sources: Aldrich 1963, Johnsgard 1973, Connelly *et al.* 1988, Fischer *et al.* 1993, Drut 1994, Washington Department of Fish and Wildlife (WDFW) 1995, Washington Sage and Columbian Sage Grouse Workshop (WSCSGW) 1996 and 1998, and Schroeder *et al.* 1999a.

Sage grouse, also known as sage fowl, spine-tailed grouse, fool hen, cock-of-the-plains, and sage chicken, are gallinaceous (chicken-like, ground-nesting) birds, and are the largest North American grouse species. Adult males range in size from 66 to 76 centimeters (cm) (26 to 30 inches (in)) and weigh between 2 and 3 kilograms (kg) (4 and 7 pounds (lb)); adult females range in size from 48 to 58 cm (19 to 23 in) and weigh between 1 and 2 kg (2 and 4 lb). Males and females have dark grayish-brown body plumage with many small gray and white speckles, fleshy yellow combs over the eyes, long pointed tails, and dark-green toes. Males also have blackish chin and throat feathers, conspicuous phylloplumes (specialized erectile feathers) at the back of the head and neck, and white feathers around the neck and upper belly forming a ruff. During breeding displays, males also exhibit olive-green apteria (fleshy bare patches of skin) on their breasts.

Sage grouse depend on a variety of shrub steppe habitats throughout their life cycle, and are particularly tied to several species of sagebrush (*Artemesia* spp). Adult sage grouse rely on sagebrush throughout much of the year to provide roosting cover and food, and depend almost exclusively on sagebrush for food during the winter. If shrub cover is not available, they will roost in snow burrows. While average dispersal movements are generally less than 35 kilometers (km) (21 miles (mi)), sage grouse may disperse up to 160 km (100 mi) between seasonal use areas. Sage grouse also exhibit strong site fidelity (loyalty to a particular area), and are capable of dispersing over areas of unsuitable habitat.

A wide variety of forb (any herb plant that is not a grass) species are used as forage by adult sage grouse from spring to early fall, and hens require an abundance of forbs for pre-laying and nesting periods. An assortment of forb and insect species form important nutritional components for chicks during the early stages of development. Sage grouse typically seek out more mesic (moist) habitats that provide greater amounts of succulent forbs and insects during the summer and early fall. Winter habitat use varies based upon snow accumulations and elevational gradients, and sage grouse likely choose winter habitats based upon forage availability.

During the spring breeding season, male sage grouse gather together and perform courtship displays on areas called leks, primarily during the morning hours just after dawn. Leks consist of patches of bare soil, short grass steppe, windswept ridges, exposed knolls, or other relatively open sites, and they are often surrounded by more dense shrub steppe cover, which is used for roosting or predator evasion during the breeding season. Leks range in size from less than 0.4 hectare (ha) (1 acre (ac)) to over 40 ha (100 ac), contain several to hundreds of males, and are usually situated in areas of high female use. Leks used over many consecutive years (historic leks) are typically larger than, and often surrounded by, smaller and less stable satellite leks. Males defend individual territories within leks and perform elaborate displays with their specialized plumage and vocalizations to attract females for mating. Relatively few, dominant males account for the majority of breeding on a given lek.

After mating, females may move a maximum distance of 36 km (22 mi) depending on the availability of suitable nesting habitat, and typically select nest sites under sagebrush cover. Nests are relatively simple and consist of scrapes on the ground, which are sometimes lined with feathers and vegetation. Clutch sizes range from 6 to 13 eggs, and nest success ranges from 10 to 63 percent. Chicks begin to fly at 2 to 3 weeks of age, and broods remain together for up to 12 weeks. Most juvenile mortality occurs during nesting and the chicks' flightless stage, and is due primarily to predation or severe weather conditions. Shrub canopy and grass cover provide concealment for sage grouse nests and young, and may be critical for reproductive success.

Sage grouse typically live between 1 and 4 years and have an annual mortality rate of roughly 50 to 55 percent, with females generally having a higher survival rate than males. Up to 50 percent of all sage grouse mortality is caused by predation, from both avian (*e.g.*, hawks, eagles, and ravens) and ground (*e.g.*, coyotes, badgers, and ground squirrels) predators.

Prior to European expansion into western North America, sage grouse (*Centrocercus urophasianus*) were believed to occur in 16 States and 3 Canadian provinces (Schroeder *et al.* 1999a), although their historic status in Kansas and Arizona is unclear (Colorado Sage Grouse Working Group

(CSGWG) 1997). Currently, sage grouse occur in 11 States and 2 Canadian provinces: ranging from extreme southeastern Alberta and southwestern Saskatchewan, south to western Colorado, and west to eastern California, Oregon, and Washington. In addition to these States, sage grouse occur in southern Idaho, northern Nevada, western and northern Utah, Wyoming, southern and eastern Montana, and extreme western North and South Dakota. Sage grouse have been extirpated from Nebraska, Kansas, Oklahoma, New Mexico, and Arizona, and from British Columbia, Canada (Braun 1998). Range wide, sage grouse distributions have declined in a number of areas, most notably along the periphery of their historic range.

Little substantiated information is available regarding the historic abundance of sage grouse throughout their range. However, within the literature, the general consensus is that considerable declines have occurred from historic population levels, and much of the overall decline occurred from the late 1800s to the mid 1900s (Hornaday 1916, Crawford and Lutz 1985, Drut 1994, WDFW 1995, Coggins and Crawford 1996, Braun 1998, Schroeder *et al.* 1999a).

A number of studies since the mid-1900s provide sage grouse density estimates for a range of habitats considered of low to high quality (Johnsgard 1973, Drut *et al.* 1994a, WDFW 1995). Assuming 1 grouse per square kilometer (km^2) (0.4 square mi (mi^2) as an approximate lower limit, 10 grouse per km^2 (0.4 mi^2) as an approximate upper limit (Michael Schroeder, WDFW, pers. comm. 1999), and the most recent estimate of historic sage grouse distribution, roughly between 1.6 million and 16 million sage grouse would have occurred rangewide prior to European expansion across western North America.

Braun (1998) provides a range of values for current breeding sage grouse abundance by State and Canadian province calculated by males on leks in the spring (Table 1). In order to estimate the total current range-wide abundance of sage grouse, the following estimates of maximum abundance for the four States containing over 20,000 sage grouse were made from the available information. For Oregon, the high population estimate of approximately 66,000 for 1993 was used (after Willis *et al.* 1993). For the remaining three States, it was assumed that the most recent available harvest estimates (Idaho 1996, Wyoming 1998, Montana 1998) accounted for roughly 10 percent (after Zablan 1993) of the total State population. These assumptions result in upper limit estimates of 189,000, 151,000, and 72,000 sage grouse in the spring breeding population (*i.e.*, post-harvest) in Idaho, Wyoming, and Montana, respectively. Considering Table 1 and the above information, currently there are approximately 100,000–500,000 sage grouse range wide.

TABLE 1. CURRENT ESTIMATED SAGE GROUSE ABUNDANCE (INDIVIDUALS IN THE 1998 BREEDING POPULATION) IN VARIOUS AREAS OF NORTH AMERICA (AFTER BRAUN 1998).

500±	< 2,000	< 10,000	<20,000	>20,000
Alberta Saskatchewan	North Dakota South Dakota Washington	California	Colorado Nevada Utah	Idaho Oregon Montana Wyoming

Based on the best available information, the most conservative estimate indicates that there has been roughly a 69 percent reduction from historic range-wide sage grouse abundance. Given a worst-case scenario, sage grouse abundance has declined more than 99 percent from historic levels. The true decline in sage grouse abundance likely falls between these upper and lower limits.

The historic distribution of western sage grouse (*Centrocercus urophasianus phaios*) extended from extreme south-central British Columbia southward through eastern Washington and Oregon, except in extreme southeastern Oregon near the Idaho/Nevada borders. Sage grouse inhabiting California and extreme western Nevada are thought to represent an intermediate form between the western and eastern (*C.u. urophasianus*) subspecies (Aldrich 1963). Currently, western sage grouse occur in southeastern Oregon and central Washington (Johnsgard 1973, Drut 1994, WDFW 1995).

Currently, two subspecies of sage grouse are recognized by the American Ornithologists' Union (AOU 1957). The eastern/western taxonomic split (*circa* 1940s) was based on plumage coloration and relatively few specimens representing the western birds, including seven from Oregon, three from Washington, and one from California (Aldrich 1946). With regard to current taxonomic standards and information generated over the last few decades, these subspecies designations may be inappropriate (Johnsgard 1983, Schroeder *et al.* 1999a). Considering recent work on other populations of sage grouse (*i.e.*, in southwestern Colorado and southeastern Utah) and the uncertainties surrounding the subspecific designations, the taxon is likely to undergo formal reevaluation and ordering in the near future. This reevaluation is likely to split the taxon into two separate species, discontinuing recognition of the eastern and western subspecies and recognizing only the northern sage grouse and Gunnison sage grouse in Colorado and Utah (WSSGTC 1999).

Historically, western sage grouse in Washington ranged from Oroville in the north, west to the Cascade foothills, east to the Spokane River, and south to the Oregon border (Yocom 1956). Historic references indicate there were large numbers of sage grouse in Washington (Sveum 1995, WDFW 1995), and annual State harvests averaged roughly 1,800 birds from 1951 to 1973. Harvest rates declined from 900 in 1974 to 18 in 1987, and Washington closed the sage grouse hunting season in 1988 (WDFW 1995). Western sage grouse have been extirpated from seven counties in Washington and currently occupy approximately 10 percent of their historic range in the State.

Two populations of western sage grouse remain in Washington, roughly totaling 1,000 birds (WSGWG 1998). One occurs primarily on private and State-owned lands in Douglas County (approximately 650 birds); the other occurs at the Yakima Training Center (YTC), administered by the Army, in Kittitas and Yakima Counties (approximately 350 birds). These two populations are isolated from the Oregon population (WDFW 1995, Livingston 1998) and nearly isolated from one another (Schroeder, pers. comm. 1999).

Except for Wallowa County, western sage grouse were distributed throughout central and eastern Oregon in sagebrush-dominated areas until the early 1900s (Gabrielson and Jewett 1940). Presently, Malheur, Harney, and Lake Counties harbor the bulk of western sage grouse in Oregon (roughly 24,000 to 58,000 birds), with the remaining portion (roughly 3,000 to 8,000 birds) split among Baker, Crook, Deschutes, Grant, Klamath, Union, and Wheeler Counties (after Willis *et al.* 1993). Sage grouse in extreme southern Malheur and Harney Counties fall within the recognized range of the eastern subspecies (Drut 1994).

Estimates of the historic abundance of western sage grouse range from roughly 200,000 to 2,000,000 birds. Further, it is estimated that the northwestern extension of sage grouse range (*i.e.,* central Oregon northward), which includes nearly all of the Columbia Plateau biogeographic zone (after Wisdom *et al.* 1998), historically harbored roughly 100,000 to 1,000,000 birds. The historic population in Washington is estimated to have been between 60,000 and 600,000. Using best- and worst-case scenarios, western sage grouse abundance has declined between 67 and 97 percent from historic levels. Estimates of the decline from historic abundance for the northwestern extension of the species' range as a whole, and for sage grouse in Washington in particular, are equal to or exceed 97 percent.

While the petitioners requested that we list the western sage grouse under the Act as a threatened or endangered species in the State of Washington, we do not base listing decisions on political subdivisions, except international boundaries. However, as discussed earlier, we have developed policy that provides for the recognition of distinct population segments (DPSs) of vertebrate species and subspecies for consideration under the Act (61 FR 4722).

Under our DPS policy, two elements are used to assess whether a population under consideration for listing may be recognized as a DPS. These elements are: (1) A population segment's discreteness from the remainder of the taxon, and (2) the population segment's significance to the taxon to which it belongs. If we determine that a population being considered for listing may represent a DPS, then the level of threat to the population is evaluated based on the five listing factors established by the Act to determine if listing as either threatened or endangered may be warranted. Formal recognition of a DPS and evaluation of its listing status under the Act are determined during status reviews, which are initiated after 90-day petition findings that find there is substantial information to indicate that a listing may be warranted.

Two criteria are used to determine if a population segment may be considered discrete from the remainder of the taxon. The first is isolation from other populations as a consequence of physical, physiological, ecological, or behavioral factors. The second is if the population segment can be delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. As western sage grouse have been extirpated from British Columbia, Canada, the international boundary criterion is not addressed for the purposes of this 90-day petition finding.

Until recently, the two populations of sage grouse that remain in Washington were considered relatively continuous, and may now represent isolated components of a single metapopulation (WDFW 1995, Schroeder *et al.* 1999b). Sporadic sightings outside current concentrations indicate some minimal interaction and, possibly, genetic interchange between them (WDFW 1995; Schroeder; pers. comm. August 18, 1999; Pounds, pers. comm. September 2, 1999). However, a number of telemetry studies have not documented their intermixing (Schroeder; pers. comm. 1999; Pounds, pers. comm. 1999), and it is likely that they are effectively isolated due to a variety of human influences.

The next closest sage grouse population is located over 240 km (150 mi) to the south, in central Oregon. With regard to sage grouse life history (*e.g.,* seasonal movements, dispersal behavior) and recent census information, the Washington birds may be considered fully discrete from the Oregon populations (WDFW 1995; Schroeder, pers. comm. 1999; Pounds, pers. comm. 1999).

Based on this information, we find that the population of sage grouse that occurs in Washington may be discrete from the remainder of the taxon.

The DPS policy describes a number of factors, singly or in combination, that may demonstrate the significance of a discrete population segment to its taxon, including: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other population segments in its genetic characteristics. Those factors that may have bearing on the sage grouse that occur in Washington are addressed separately below.

Sage grouse in Douglas County, in north-central Washington, appear to display a greater reproductive effort compared with other populations throughout the species' range (Schroeder 1997). This increased effort includes more eggs laid per nest and higher rates of nesting and renesting attempts. Such differences in behavioral and reproduction ecology suggest that this area represents an unusual and unique ecological setting compared to the rest of the species' range. However, it is difficult to distinguish whether these results represent a regional difference within the species, or if they may be related to the habitat quality or type available, variable environmental conditions, anthropogenic influences unique to the area (*e.g.,* reduced and fragmented habitats, disturbance), or even study design. Identifying the cause(s) of a true increased reproductive effort may hold important implications for the region's sage grouse, and conservation of the species in general.

A number of studies address the potential influences of biogeography on a species. The following provides preliminary support to the claim that loss of the potential DPS would result in a significant gap in the range of the taxon.

The extent to which biogeographic zones have acted to differentiate regional sage grouse populations is currently unclear. However, the different habitat use patterns exhibited by sage grouse may have significant consequences for the fitness of populations occupying different zones, and for future management decisions addressing the species' conservation. These consequences may include differing diet and nutritional preferences (Johnson and Boyce 1990, Welch *et al.* 1991, Drut *et al.* 1994b, Barnett and Crawford 1994), responses to fire or predation (DeLong *et al.* 1995, Fischer *et al.* 1996, Pyle and Crawford 1996), and seasonal movement patterns (Connelly *et al.* 1988, Schroeder *et al.* 1999a).

The significance test under the DPS policy can also be met if there is evidence that the population segment

differs markedly from other populations in its genetic characteristics. Relatively little genetic work has been conducted on sage grouse in Washington, although studies to investigate the species' range-wide genetic profile are underway or proposed (Quinn 1996; Quinn *et al.* 1997; Benedict and Quinn 1998; Sara Oyler-McCance, University of Denver, pers. comm. 1999). To date, range-wide investigations include samples from Colorado, Utah, Nevada, California, Oregon, and Washington. Currently, no clear genetic distinction occurs between the recognized eastern and western subspecies, or between the only sage grouse so far analyzed in Washington (south-central population) and the other sampling locales. However, these results are preliminary, and to what extent the forces of isolation, adaptive change, genetic drift, and/or inbreeding may have influenced the genetic profiles of sage grouse throughout the northwestern United States is unclear (Oyler-McCance, pers. comm. 1999; Nicolas Benedict, University of Denver, pers. comm. 1999).

In summary, the sage grouse population in Washington may represent the only occurrence of the species within the northwestern extension of its historic range (and the Columbia Plateau biogeographic zone). This area represents approximately one half of the historic range of the western subspecies. We currently recognize the western subspecies; however, this designation is undergoing expert review and may be discontinued in the near future. The available information indicates that it may be more appropriate to consider the significance of the sage grouse population in Washington with regard to the entire range of the species. Information concerning sage grouse life-history attributes indicates that the sage grouse in Washington may represent persistence of the species in an ecological setting unusual or unique for the taxon. The biogeographical information indicates that the loss of this discrete population segment may result in a significant gap in the range of the taxon. Finally, not enough information currently exists for us to determine if sage grouse within the northwestern extension of the species' historic distribution may exhibit a significantly different genetic makeup compared to the remainder of the taxon.

Based on the available information, we find that the information is inconclusive either to support or refute a significance determination for the discrete population of sage grouse that occurs in Washington. Further review of the available information, and additional information that would be accumulated during a status review, would allow for a comprehensive examination of this population's significance to the remainder of the taxon.

As such, the conservation status for this potential DPS in relation to the Act's standards for listing are addressed, below.

A number of influences have been implicated in sage grouse population declines throughout the species' range (Crawford and Lutz 1985, Blus *et al.* 1989, Braun *et al.* 1994, Drut 1994, WDFW 1995, Fischer *et al.* 1996, Connelly and Braun 1997, Schroeder *et al.* 1999a). Of primary concern is the variety of impacts to shrub steppe habitats, which include conversion for agricultural, urban, and mineral resources development, construction of utility and transportation corridors, and habitat degradation through overgrazing, brush control (*e.g.,* prescribed burning, herbicide spraying, and chaining), altered fire frequencies, and exotic species invasions. Other potential influences that may be associated with local population declines include predation, excessive hunting, disease and parasitism, chemical applications for pest control, weather cycles, and recreational activities. As a result of these combined influences, sage grouse distribution and abundance have continued to decline over the past decade, and a number of populations may now be at risk throughout the species' range (in WSCSGW 1996 and 1998). Currently, sage grouse populations may be considered secure in five States, including Montana, Wyoming, Idaho, Nevada, and Oregon (Connelly and Braun 1997).

From 1986 to 1993, roughly 500,000 cattle were grazed in the 9 central Washington counties that historically harbored sage grouse (WDFW 1995). Current estimates of other livestock abundance in central Washington and northern Oregon are not available. Excessive grazing pressure can have significant impacts on the shrub steppe ecosystems found throughout the historic range of sage grouse (Fleischner 1994), and these impacts may be exacerbated in portions of the Columbia River Basin that support the northwestern extension of the species' range. In this region, excessive grazing removes current herbaceous growth and residual cover of native grasses and forbs, and can increase the canopy cover and density of sagebrush and undesirable invasive species (Daubenmire 1988, WDFW 1995, Livingston 1998). These impacts may be especially critical to the reproductive success of sage grouse populations during the spring nesting and brood rearing periods (Crawford 1997, Connelly and Braun 1997, Schroeder *et al.* 1999a).

The latest available estimate (1993) of the number of cattle supported in Douglas County, which also supports the north-central population of sage grouse in Washington, is about 20,000 (WDFW 1995). Whether level of livestock use in the county may have negative effects on sage grouse or their habitats is not clear. Prior to 1992, livestock grazing pressure was intense throughout the area of Kittitas and Yakima Counties that now comprises the YTC, which supports the south-central population of sage grouse in Washington. In 1992, grazing intensity was reduced at the YTC within the sage grouse protection areas identified by the Army. In 1995, cattle grazing was eliminated throughout the installation (Livingston 1998). Twice annually during spring and fall, flocks of sheep are trailed through the YTC over a period of several weeks (Pounds, pers. comm. 1999). To what degree current livestock use levels may be impacting sage grouse or their habitat at the YTC is unknown. However, impacts from past livestock grazing are still evident throughout the installation (Livingston 1998).

During the first half of the 1900s, large portions of the shrub steppe ecosystem in Washington were converted for dryland crop production (Daubenmire 1988, WDFW 1995). During the mid-1900s, a number of hydro-electric dams were developed on the Columbia and Snake Rivers in Washington. The reservoirs formed by these projects impacted native shrub steppe habitat adjacent to the rivers and precipitated further conversion of large expanses of upland shrub steppe habitat in central Washington for irrigated agriculture (WDFW 1995). Dobler (1994) estimated that approximately 60 percent of the original shrub steppe habitat in Washington had been converted for other, primarily agricultural, uses. While at much-reduced levels, shrub steppe habitat continues to be converted for both dryland and irrigated crop production. In addition, the U.S. Bureau of Reclamation retains options for further development of the Columbia Basin Irrigation Project in central Washington (USDI 1998). Cassidy (1997) considered major portions of Washington's shrub steppe ecosystem among the least protected areas in the State.

Large areas of privately owned lands in Douglas and Grant Counties are currently withdrawn from crop

production and planted to native and non native cover under the Federal Conservation Reserve Program (CRP), established in 1985 (USDA 1998). Lands under the CRP are very important to the local population of sage grouse in north-central Washington (Schroeder, pers. comm. 1999). A number of CRP contracts in Washington have expired since 1995, and more are scheduled to expire from now through 2002. New contracts completed in 1998 for Douglas County have increased the acreage of CRP lands potentially available for use by sage grouse. However, contracts extend for just 10 years, and new standards for CRP lands will be implemented that may require replanting of significant acreage under existing contracts (USDA 1998, Schroeder, pers. comm. 1999). Presently, it is unclear what effects these changes have had, or will have, on the north-central population of sage grouse in Washington.

In 1991, the Army expanded the YTC along its northern boundary by approximately 24,000 ha (60,000 ac) to form its present configuration and size of approximately 130,000 ha (320,000 ac). One of the primary justifications for expansion of the installation was to reduce impacts to heavily used areas by allowing rotational training exercises and rehabilitation of impacted sites (USDD 1989). In 1994, the Army restationed mechanized and armored combat forces to Fort Lewis (USDD 1994). This restationing action was undertaken to accommodate brigade-level maneuver exercises, and may result in an increase in overall training activity and associated impacts at the YTC. The large-scale training exercises at the YTC are scheduled to occur at 18- to 24-month intervals, and may involve more than 10,000 troops and 1,000 tracked and wheeled vehicles. Various smaller-scale training exercises are also conducted annually at the YTC by other U.S. and allied military units (USDD 1989, Livingston 1998).

In the fall of 1995, the Army conducted its first large-scale training exercise at the YTC following the restationing action. Analysis of the impacts from this exercise indicated that over 9 percent of the sagebrush plants within the sage grouse protection areas experienced major structural damage. In addition, modeling exercises indicated that sagebrush cover would decline due to similar training scenarios if conducted on a biannual basis (Cadwell *et al.* 1996). Analyses of the potential impacts to other shrub steppe components that may be important to sage grouse at the YTC (*e.g.,* grass, forb, and insect quality and abundance), or those associated with the smaller, ongoing training activities, are not currently available. Cadwell *et al.* (1996) suggested that native vegetation on impacted sites with limited soil disturbance will recover following large-scale maneuver exercises. In addition, the YTC conducts aggressive revegetation efforts for sagebrush and native grasses within the sage grouse protection areas (Livingston 1998), and has eliminated season-long grazing on the installation (USDD 1996). Evaluation of the quality or quantity of naturally recovered areas and the efficacy of revegetation efforts is currently not available.

Natural and human-caused fire is a significant threat to sage grouse throughout Washington because, at increased frequencies, it can remove sagebrush from the vegetation assemblage (USDI 1994, WDFW 1995). Sagebrush is easily killed by fire (Daubenmire 1988) and, in the absence of a sufficient seed source, may not readily reinvade sites where it has been removed. Fire may be especially damaging at the YTC, where military training activities provide multiple ignition sources, vegetative cover is relatively continuous, and invasive species such as cheatgrass *(Bromus tectorum)* and knapweed *(Centauria spp.)* may provide fine fuels that can carry a fire. The Army considered fire management and control in its planning efforts for the restationing action (USDD 1996), and YTC has since developed a detailed fire management plan (USDD 1998). However, the potential for relatively large range fires to occur at the YTC remains. In 1996, over 25,000 ha (60,000 ac) of shrub steppe habitat, much of it currently and potentially used by sage grouse, was burned as a result of training activities. Livingston (1998) indicates that a fire of this magnitude within the identified sage grouse protection areas would jeopardize the species' persistence at the installation.

Well-managed hunting with harvest rates below roughly 30 percent are not believed to have significant impacts on healthy sage grouse populations (Schroeder *et al.* 1999a). Harvest rates that exceed 30 percent or hunting of relatively small, isolated populations may act to limit sage grouse abundance in some areas. Western sage grouse in Washington have not been subject to hunting since 1988 (WDFW 1995).

The fragmented, isolated nature of the populations of sage grouse that occur in Washington is a concern for the conservation of the species in the northwestern extension of its historic range. Preliminary viability analyses conducted by the WSGWG (1998) indicate that neither local population is likely viable at their current levels over the long term (approximately 100 years). In addition to the relatively large-scale impacts on native shrub steppe habitat (above), other naturally occurring impacts and human influences of lesser magnitude may pose threats to Washington's isolated local populations.

Potential risks to small and/or fragmented populations include direct impacts to individuals from inclement weather conditions, altered predator demographics or behavior, agricultural practices, vehicle collisions, pest control measures, and military training. Impacts may also result from indirect disturbance of the local populations caused by agricultural and grazing activities, transportation corridors, recreation, and military training events (over-flights, troop movements, etc.). The relatively small, isolated populations of sage grouse in Washington may also be at greater risk to the deleterious effects from inbreeding. Conversely, outbreeding depression may be a concern for reintroduction efforts in Washington. It is unlikely that any one of the above factors has played a significant role in the population declines and range reductions of sage grouse in the northwestern extension of their historic range. However, these influences may now play an important role in the dynamics of the relatively small and isolated local populations that remain in Washington.

We have reviewed the petition, literature cited in the petition, other pertinent literature, and information available in our files, and consulted with biologists and researchers familiar with sage grouse. After reviewing this information, we find that the Washington population of western sage grouse may be both discrete and significant, and so may satisfy our criteria for designation as a DPS. On the basis of the best scientific and commercial information available, we also find that sufficient information exists with regard to the five listing factors established by the Act and ongoing conservation measures to indicate that listing the population of sage grouse that occurs in Washington as threatened or endangered may be warranted.

In making this finding, we recognize that there have been declines in sage grouse populations primarily attributed to the loss and degradation of shrub steppe habitat. These impacts are likely due to a combination of factors, including crop production, over-grazing by livestock, fire, military training, rural

and suburban development, dam construction, herbicide spraying, recreation, and other factors. The petition presents evidence that the population of this species that occurs in Washington is at risk. We also recognize that various State and Federal agencies in Washington, and throughout the species' historic distribution, are actively managing the birds to try and improve their overall population status and/or attempting to restore them to currently unoccupied habitats.

Section 4(b)(3)(B) of the Act requires that, to the maximum extent practicable within 12 months from the date that a petition presenting substantial information is received, we make a finding as to whether it is warranted to list the petitioned species as threatened or endangered. Due to a backlog of court-ordered listing and critical habitat actions and funding constraints, a status review for the sage grouse population that occurs in Washington will probably not be conducted until May 2001. If the 12-month finding determines listing the western sage grouse in Washington is warranted, the designation of critical habitat would be addressed in the subsequent proposed rule.

Public Information Solicited

We are required to promptly commence a review of the status of the species after making a positive 90-day finding on a petition. With regard to this positive petition finding, we are requesting information primarily concerning the species' population status and trends, extent of fragmentation and isolation of other population segments, significance or nonsignificance of the Washington population and/or any other discrete population segments, potential threats to the species, and ongoing management measures that may be important with regard to the conservation of sage grouse in Washington or throughout the remainder of the taxon's historic range. In addition, we request information relating to the designation of critical habitat for western sage grouse in Washington.

References Cited

A complete list of all references cited herein is available on request from the Upper Columbia River Basin Field Office, (See **ADDRESSES** section).

Author: The primary author of this document is Chris Warren, U.S. Fish and Wildlife Service, 11103 E. Montgomery Drive, Spokane, Washington, 99206.

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: August 18, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–21610 Filed 8–23–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 000801223-0223-01; I.D. 062000A]

RIN 0648-AO24

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Operation of a Low Frequency Sound Source by the North Pacific Acoustic Laboratory

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; receipt of an application for a small take exemption; request for comment and information.

SUMMARY: NMFS has received a request from the University of California San Diego, Scripps Institution of Oceanography (Scripps), for a small take of marine mammals incidental to the continued operation of a low frequency (LF) sound source previously installed off the north shore of Kauai by the Acoustic Thermometry of Ocean Climate (ATOC) project. As a result of that request, NMFS is considering whether to propose regulations that would authorize the incidental taking of a small number of marine mammals. In order to issue regulations for this taking, NMFS must determine that this taking will have no more than a negligible impact on the affected species and stocks of marine mammals. NMFS invites comment on the application and suggestions on the content of the regulations.

DATES: Comments and information must be postmarked no later than September 25, 2000. Comments will not be accepted if submitted via e-mail or the Internet.

ADDRESSES: Comments should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226. A copy of the application, which contains the references used in this document, may be obtained by writing to this address, or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**). A copy of the draft environmental impact statement (DEIS) may be obtained from Marine Acoustics Inc., 809 Aquidneck Ave., Middletown, RI 02842, attn. Kathy Vigness Reposa, 401-847-7508.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713-2055, ext. 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.) (MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will be small, will have no more than a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for Arctic Ocean subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On May 21, 2000, NMFS received an application for an incidental, small take authorization under section 101(a)(5)(A) of the MMPA from Scripps to take marine mammals incidental to the continued operation of a LF sound source previously installed off the north shore of Kauai by the ATOC project. An alternative source location under consideration in the DEIS and here is for Midway Island. A final decision on whether to re-use the ATOC source (or to install a new source and cable at Midway), in order to combine a second phase of research on the feasibility and value of large-scale acoustic thermometry with long range underwater sound transmission studies and marine mammal monitoring and studies will be made based, in part, on findings and determinations made under the National Environmental Policy Act (NEPA). As the principal funding agency for the proposed action, a DEIS has been prepared by the Office of Naval Research (ONR). NMFS is a

cooperating agency in the preparation of this DEIS.

Project Description

Acoustic thermometry is a method for obtaining information about the temperature field in the ocean from precise measurements of the travel times of sound pulses transmitted through the ocean. It is also a technique for acoustic remote sensing of the ocean interior, in which the properties of the ocean between the acoustic sources and receivers are determined, rather than the properties of the ocean at the instruments as is the case for conventional thermometers and current meters. Acoustic thermometry in the ocean is closely related to seismology, in which properties of the Earth's interior are inferred from travel times of earthquake waves.

Under the proposed action, the seabed power cable and sound source from the ATOC project would remain in their present locations on Kauai, and transmissions would continue with approximately the same signal parameters and transmission schedule used in the earlier ATOC project. The typical schedule consists of six 20-minute (min) transmissions (one every 4 hours), every fourth day, with each transmission preceded by a 5-min ramp-up period during which the signal intensity was gradually increased, representing an average duty cycle of 2 percent. With the possible exception of short duration testing with duty cycles of up to 8 percent, or equipment failure, this schedule would continue for a period of 5 years. The signals transmitted by the source would have a center frequency of 75 Hertz (Hz) and a bandwidth of approximately 35 Hz (i.e., sound transmissions are in the frequency band of 57.5-92.5 Hz). Approximately 260 watts of acoustic power would be radiated during transmission. At 1 meter (m)(33 feet (ft)) from the source (at 807 m (2,648 ft) water depth at the Kauai location), sound intensity (i.e., source level) would be about 195 decibels (dB) referenced to the intensity of a signal with a sound pressure level (SPL) of 1 microPascal (1 μPa). According to Scripps, the signal parameters and source level have been found in the ATOC project to provide adequate, but not excessive, signal-to-noise ratios in the receiver ranges of interest.

While the proposed action involves the continued operation of the source installed at the Kauai, HI location, an alternative location under consideration in the ONR DEIS would be installing a sound source and cable at a location off the coast of Midway Island.

Marine Mammals

A summary of the marine mammal species that may potentially be found in the vicinity of the ATOC source at either Kauai or Midway is presented here. For more detail on marine mammal abundance, density and the methods used to obtain this information, reviewers are requested to refer to the ONR DEIS. For general information on North Pacific Ocean marine mammals, reviewers may refer to Barlow et al. (1997).

Six species of baleen whales, humpback (*Megaptera novaengliae*), fin *Balaenoptera physalus*), blue *B. musculus*), Bryde's*B. borealis*), minke (*B. acutorostrata*), and right (*Eubalaena glacialis*) whales, may occur in the Kauai or Midway Atoll areas. Although not reported near Midway Atoll, the humpback whale is the only balaenopterid whale known to be present in reasonably large numbers. Humpback whales are considered abundant in coastal waters of the main Hawaiian Islands from November through April. Fin whales and blue whales have the potential to occur in the area; however, their distribution and abundance in the region is believed to be uncommon (Balcomb, 1987), although only a single fin whale was observed during recent ATOC marine mammal research. Right whales in the North Pacific Ocean are extremely rare and therefore, would also be rare in the Hawaiian Islands. Bryde's whales, and minke whales may be occasionally seen in the area of Midway Atoll (Leatherwood et al., 1988), but are not usually found off Kauai.

Sixteen species of odontocetes (toothed whales, dolphins and porpoises) may be found in the Kauai and Midway areas. These species are sperm whales (*Physeter macrocephalus*), short-finned pilot whales (*Globicephala macrorhynchus*), beaked whales (*Ziphius cavirostris, Berardius bairdi*, and *Mesoplodon spp.*), spinner dolphins (*Stenella longirostris*), spotted dolphin (*Stenella attenuata*), striped dolphin (*Stenella coeruleoalba*), bottlenose dolphins (*Tursiops truncatus*), rough-toothed dolphin (*Steno bredanensis*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia simus*), killer whales (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), and melon-headed whale (*Peponocephala electra*). It should be noted, however, that the latter 7 species were not sighted in or near the proposed Kauai area during marine mammal surveys conducted between 1993 and 1998.

The Hawaiian monk seal (*Monachus schauinslandi*) occurs in the area of the Leeward Hawaiian Islands.

Potential Impacts on Marine Mammals

The effects of underwater noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson et al., 1995): (1) The noise may be too weak to be heard at the location of the animal (i.e. lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) the noise may be audible but not strong enough to elicit any overt behavioral response; (3) the noise may elicit behavioral reactions of variable conspicuousness and variable relevance to the well being of the animal; these can range from subtle effects on respiration or other behaviors (detectable only by statistical analysis) to active avoidance reactions; (4) upon repeated exposure, animals may exhibit diminishing responsiveness (habituation), or disturbance effects may persist (the latter is most likely with sounds that are highly variable in characteristics, unpredictable in occurrence, and associated with situations that the animal perceives as a threat); (5) any man-made noise that is strong enough to be heard has the potential to reduce (mask) the ability of marine mammals to hear natural sounds at similar frequencies, including calls from conspecifics and/or echolocation sounds, and environmental sounds such as ice or surf noise; and (6) very strong sounds have the potential to cause either a temporary or a permanent reduction in hearing sensitivity (referred to respectively as temporary threshold shift (TTS) or permanent threshold shift (PTS). Few data on the effects of non-explosive sounds on hearing thresholds of marine mammals have been obtained, however, in terrestrial mammals, and presumably in marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any TTS. Received levels must be even higher for there to be risk of PTS.

For this project, Scripps has established the threshold for risk of harm as a single ping at 180 dB re 1 μPa_{rms} (180 dB). Harm is defined in this context as onset TTS, or the lower end of Level A harassment. Although recently some scientists have questioned whether TTS is actually an injury (see Navy, 1999, Appendix E-1, Criteria for Marine Mammal Auditory Shift), in this action, TTS is being categorized as the onset for a Level A harassment take. In this proposed action, a marine mammal would have to receive one ping greater than, or equal

to 180 dB in order to be considered receiving a non-serious injury (Level A harassment) or many pings at a received level (RL) slightly lower than 180 dB in order to potentially incur a significant biological response (Level B harassment).

In order to understand the biological significance of the risk of Level A or Level B harassment, it is necessary to determine how this risk might affect a population of marine mammals, starting with acoustic criteria. First, the marine mammal must be able to hear LF sound. Second, the animal must incur a reaction to the LF sound that is more than momentary. Third, any effect from LF sound must involve a significant behavioral change in a biologically important activity, such as feeding, breeding, or migration, all of which are potentially important for reproductive success of the population.

Based on California and Hawaii ATOC Marine Mammal Research Program (MMRP), Scripps found no overt or obvious short-term changes (1) in the abundance and distribution of marine mammals in response to the ATOC transmissions (intensive statistical analyses of aerial survey data showed some subtle shifts in distribution of humpback (and possibly sperm) whales away from the California site (Calambokidis et al., 1998) and humpback whales away from the Kauai site); (2) in the behavior of humpback whales or elephant seals in response to the playback of ATOC-like sounds (intensive statistical analyses revealed some subtle changes in the behavior of humpback whales (Frankel and Clark, 1998; 1999b); or (3) in the singing behavior of humpback whales in the vicinity of the Kauai ATOC sound source. Bioacoustic experts concluded that these subtle effects would not adversely affect the survival of an individual whale or the status of the North Pacific humpback whale population (Frankel and Clark, 1999a).

To assess the potential environmental impact of the North Pacific Acoustic Laboratory (NPAL) sound source on marine mammals, it was necessary for Scripps to predict the sound field that a given marine mammal species could be exposed to over time. This is a multi-part process involving (1) the ability to measure or estimate an animal's location in space and time, (2) the ability to measure or estimate the three-dimensional sound field at these times and locations, (3) the integration of these two data sets to estimate the potential impact of the sound field on a specific animal in the modeled population, (4) the conversion of the resultant cumulative exposures for a modeled population into an estimate of the risk from a prolonged disruption of a biologically important behavior, and (5) the conversion of these estimates of behavioral risk into an assessment of risk in terms of the level of potential biological removal.

Next, a relationship for converting the resultant cumulative exposures for a modeled population into an estimate of the risk to the entire population of a prolonged disruption of a biologically important behavior and of injury was developed. This process assessed risk in relation to RL and repeated exposure. The resultant ≥risk continuum≥ is based on the assumption that the threshold of risk is variable and occurs over a range of conditions rather than at a single threshold.

Taken together, the recent results on marine mammals from LF sounds, the acoustical modeling, and the risk assessment, provide an estimate of potential environmental impacts to marine mammals.

The acoustical modeling process was accomplished by Scripps using the U.S. Navy's standard acoustical performance prediction transmission loss model-Parabolic Equation (PE) version 3.4. The results of this model are the primary input to the Acoustic Integration Model (AIM). AIM was used in this analysis to estimate mammal sound exposures and integrate simulated characteristics of marine mammals (e.g., species distribution, density, dive profiles, and general movement, NPAL sound transmissions (e.g., duty cycle, transmission length), and the predicted sound field for each transmission to estimate acoustic exposure during a typical NPAL source transmission. A description of the PE and AIM models (including AIM input parameters for animal movement, diving behavior, and marine mammal distribution, abundance, and density) and the risk continuum analysis are described in detail in the Scripps application and the ONR DEIS and are not discussed further in this document. At this time, NMFS recommends reviewers read these documents if additional information is desired. If NMFS proceeds with rulemaking on this action, that rulemaking document will discuss the risk continuum and estimates of affected marine mammal populations in greater detail.

Scripps, however, has drawn some general conclusions from the relative abundance of various marine mammal species in relationship to the NPAL sound field. Under the proposed alternative (utilizing the ATOC sound source at Kauai), the only mysticete (baleen) whale species expected in the area in substantial numbers is the humpback whale, and Scripps believes that because they usually prefer nearshore locations (inside the 100-fathom (188 m) depth contour), few are expected to be exposed to received levels greater than 120 dB (i.e, the SPL level presumed by Scripps to be zero for marine mammals having the potential to incur a prolonged disturbance of biologically important behavior). Similarly, sperm whales are the most common deep-diving odontocete (toothed) whale in the area, but because they usually prefer offshore waters (i.e., water depths greater than 4,000 m (12,700 ft)), few are expected to be exposed to received levels greater than 120 dB. According to Scripps, these distributional preferences are supported by the Kauai ATOC MMRP (Mobley, 1999a).

Using the risk continuum and acoustic modeling Scripps estimated the potential for biologically significant reactions by marine mammals under the proposed action. Scripps determined that only humpback whales that remain in the vicinity of the sound source for a full day of transmissions may potentially experience any effect from the source transmissions. However, humpback whales typically travel parallel to the coast of Kauai, and, therefore, Scripps believes, would probably not receive sound from more than a single transmission.

At the Midway site, the mysticete whale expected in greatest abundance is the Bryde's whale. Because they usually prefer nearshore locations, Scripps expects few animals would be exposed to RLs greater than 120 dB. Similarly, sperm whales are the most common deep-diving odontocetes in the area, but because they usually prefer offshore waters (i.e., water depths greater than 4,000 m (12,700 ft)), few are expected to be exposed to received levels greater than 120 dB. A much higher abundance of Hawaiian monk seals is expected near Midway Island than Kauai since this species prefers the small, mostly uninhabited chain of islands and atolls northwest of the main Hawaiian Islands.

Using the risk continuum and acoustic modeling Scripps determined that there would be no potential for biologically significant effects on marine mammals from source transmissions at Midway Island, although some subtle effects may occur.

Mitigation

Scripps' proposed action includes mitigation that would minimize the potential effects of the NPAL sound source to marine mammals. First, the sound source would operate at the

minimum duty cycle necessary to support the large-scale acoustic thermometry and long-range propagation objectives. Transmissions would contiue with approximately the same transmission schedule as that used during the first feasibility phase of the ATOC study. Second, any increases in the duty cycle beyond the nominal 2 percent (with a maximum of 8 percent) would not occur during the peak humpback whale season (January-April). The proposed action includes the possibility of an 8-percent duty cycle for up to 2 months out of each year; this action, however, would not occur during the period of time humpback whales inhabit Hawaiian waters. Third, the sound source would operate at the minimum power level necessary to support large-scale acoustic thermometry and long-range sound transmission objectives. The fourth mitigation measure proposed is to ramp-up the NPAL sound source transmissions over a 5-min period. This is believed to reduce the potential for startling marine mammals in the vicinity of the NPAL sound source and provides them an opportunity to move away from the sound source before transmitting at the maximum power levels.

Monitoring and Reporting

In an effort to understand the potential for long-term effects of man-made sound on marine mammals, Scripps proposes to monitor the distribution and abundance of marine mammals in the vicinity of the sound source, by conducting a total of 4 aerial surveys during each humpback whale season. The data collected will be compared with data collected during the Kauai ATOC Marine Mammal Research Program. Reports on the aerial survey results will be available to the public in reports. A report on activites will be provided to NMFS annually.

NEPA

The ONR has released a DEIS under NEPA (see **ADDRESSES**). NMFS is a cooperating agency, as defined by the Council on Environmental Quality (40 CFR 1501.6), in the preparation of this DEIS.

Endangered Species Act (ESA)

NMFS will be consulting with the ONR under section 7 of the ESA on this action. In that regard, the ONR has submitted to NMFS a Biological Assessment under the ESA. This consultation will be concluded prior to a determination on issuance of a final rule and exemption.

Classification

This action has been determined to be not significant under Executive Order 12866.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the regulations to allow the taking. NMFS requests that commenters review the ONR DEIS and/or Scripps' small take application and not submit comments based solely on this document. NMFS will consider information submitted in developing proposed regulations to authorize the taking. If NMFS proposes regulations to allow this take, interested parties will be given ample time and opportunity to comment on the proposed rule.

Dated: August 15, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–21679 Filed 8–23–00; 8:45 am]

Billing Code: 3510-22-S

Notices

Federal Register
Vol. 65, No. 165
Thursday, August 24, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Advisory Committee on Beginning Farmers and Ranchers

AGENCY: Farm Service Agency, USDA.

ACTION: Notice requesting nominations.

SUMMARY: The Secretary of Agriculture intends to renew the charter of the Advisory Committee on Beginning Farmers and Ranchers (Committee). The Committee provides advice to the Secretary on ways to encourage Federal and State beginning farmer programs to provide joint financing to beginning farmers and ranchers. Nominations of persons to serve on the Committee are invited.

DATES: Nominations will be accepted through September 25, 2000, and should be submitted to Mark Falcone, Designated Federal Official (DFO) for the Committee, at the address below.

ADDRESSES: Mark Falcone, DFO for the Advisory Committee on Beginning Farmers and Ranchers, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5438-S, STOP 0522, Washington, DC 20250–0522; telephone (202) 720–1632; FAX (202) 690–1117; e-mail mark_falcone@wdc.fsa.usda.gov.

FOR FURTHER INFORMATION CONTACT: Mark Falcone at (202) 720–1632.

SUPPLEMENTARY INFORMATION: Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102–554) required the Secretary of Agriculture to establish the Committee for the purpose of advising the Secretary on the following:

(1) the development of a program of coordinated financial assistance to qualified beginning farmers and ranchers under section 309(i) of the Consolidated Farm and Rural Development Act (Federal and State beginning farmer programs provide joint financing to beginning farmers and ranchers); (2) methods of maximizing the number of new farming and ranching opportunities created through the program; (3) methods of encouraging States to participate in the program; (4) the administration of the program; and (5) other methods of creating new farming or ranching opportunities.

The law requires that members include representatives from the following groups: (1) The Farm Service Agency (FSA); (2) State beginning farmer programs (as defined in section 309(i)(5) of the Consolidated Farm and Rural Development Act); (3) commercial lenders; (4) private nonprofit organizations with active beginning farmer or rancher programs; (5) the Cooperative State Research, Education, and Extension Service; (6) Community colleges or other educational institutions with demonstrated experience in training beginning farmers or ranchers; and (7) other entities or persons providing lending or technical assistance to qualified beginning farmers or ranchers. The Secretary has also appointed farmers and ranchers to the Committee.

Departmental Regulation 1042–119 dated November 25, 1998, formally established the Committee and designated FSA to provide support. FSA is now accepting nominations of individuals to serve for a 2-year term on the Committee, which is comprised of 18 individuals. One-third of the existing Committee membership will be replaced when the Committee charter expires on November 25, 2000. The Committee will be reestablished with the 12 old and six new members thereafter. Reappointments are made to assure effectiveness and continuity of operations. The duration of the Committee is indefinite. No member, other than a USDA employee, can serve for more than 6 consecutive years.

Appointments to the Committee will be made by the Secretary of Agriculture. Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

The Committee meets at least once a year and all meetings are open to the public. Committee meetings provide an opportunity for members to exchange ideas on ways to increase opportunities for beginning farmers and ranchers through Federal-State partnerships. Members discuss various issues and draft numerous recommendations, which are submitted to the Secretary in writing.

Signed in Washington, D.C. on August 18, 2000.

Parks Shackleford,

Acting Administrator, Farm Service Agency.

[FR Doc. 00–21645 Filed 8–23–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review.

SUMMARY: On August 11, 2000, Whirlpool Corporation filed a First Request for Panel Review with the Canadian Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final determination made by the Canada Customs and Revenue Agency, respecting Certain Top-Mount Electric Refrigerators, Electric Household Dishwashers, and Gas or Electric Laundry, Dryers, Originating in or Exported from the United States of America and Produced by, or on Behalf of, White Consolidated Industries, Inc. and Whirlpool Corporation, Their Respective Affiliates, Successors and Assigns. This determination was published in the *Canada Gazette*, Part I, (Vol. 134, No. 29, pp. 2229–2230) on July 15, 2000. The NAFTA Secretariat has assigned Case Number CDA–USA–00–1904–03 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue,

Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Canadian Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on May 12, 2000, requesting panel review of the final determination described above.

The Rules provide that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is September 11, 2000);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is September 25, 2000); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: August 15, 2000.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 00–21588 Filed 8–23–00; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Public Meeting on U.S. Technical Participation in 11th Quadrennial Conference of the International Organization of Legal Metrology (OIML)

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Meeting Announcement.

SUMMARY: The National Institute of Standards and Technology (NIST) will hold a public meeting to discuss U.S. technical participation in the 11th Quadrennial Conference of the International Organization of Legal Metrology (OIML). The pre-conference public meeting is open to all interested parties.

The principal focus will be on 15 OIML Recommendations on legal measuring instruments that will be presented for ratification by the Conference. These Recommendations and OIML-member nations' technical comments on them will be reviewed with interested parties who will be given an opportunity to present their views on the Recommendations and other relevant issues of the Conference.

Participants with an expressed interest in particular topics may obtain copies of the OIML Conference technical agenda, including copies of the Recommendations to be ratified. Interested parties should schedule oral presentations for the pre-conference meeting, providing a written summary of comments, no later than 22 September 2000 with the NIST Technical Standards Activities Program. Written comments are welcome at any time.

DATES: Pre-conference meeting at the National Institute of Standards and Technology: 26 September 2000 from 10:00 a.m. to 12:00 noon; Eleventh OIML International Conference of Legal Metrology in London, England: 9–13 October 2000.

ADDRESSES: Pre-conference meeting: National Institute of Standards and Technology (NIST North), Conference Room 152, 80 West Diamond Avenue, Gaithersburg, MD; International Conference: Queen Elizabeth II Conference Centre, London, England.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Richter, Technical Standards Activities Program, Office of Standards Services, National Institute of Standards and Technology, Gaithersburg, MD 2099–2150; telephone: 301/975–4025; fax: 301/975–5414; e-mail: ralph.richter@nist.gov; web site: www.ts.nist.gov/tsap and www.oiml.org

SUPPLEMENTARY INFORMATION: The International Organization of Legal Metrology (OIML) is an intergovernmental treaty organization in which the United States and 56 other nations participate. Its principal purpose is to harmonize national laws and regulations pertaining to testing and verifying the performance of legal measuring instruments used for equity in commerce, for public and worker health and safety, and for monitoring and protecting the environment. The harmonized results promote the international trade of measuring instruments and products affected by measurement.

Fifteen Recommendations will be presented for ratification by the Conference in the following two categories: (1) Those already approved by the International Committee of Legal Metrology (CIML) between 1997 and 1997; and (2) those that are expected to be submitted directly to the Conference for approval. These Recommendations and the OIML-member nations holding the responsible secretariat for their development are as follows:

Category 1

R49 Water meters intended for the metering of cold potable water (United Kingdom)
R60 Metrological regulation for load cells (USA)
R65 Force measuring system of uniaxial material testing machines (USA)
R81 Dynamic measuring devices and systems for cryogenic liquids (USA)
R85 Automatic level gauges for measuring the level of liquid in fixed storage tanks (Austria)
R93 Focimeters (Hungary)
R99 Instruments for measuring exhaust emissions (Netherlands)
R125 Measuring systems for the mass of liquids in tanks (Australia)
R126 Evidential breath analyzers (France)
R127 Radiochromic film dosimetry system for ionizing radiation processing of materials and products (USA)
R128 Ergometers for foot crank work (Germany)
R129 Multi-dimensional measuring instruments (Australia)

Category 2

—Draft OIML Recommendation: Octave-band and one-third octave-band filters (Germany)
—Draft OIML Recommendation: Polymethylmethacrylate dosimetry system for ionizing radiation

processing of materials and products (USA)

—Draft OIML Recommendation: Alanine EPR dosimetry system for ionizing radiation processing of materials and products (USA)

August 16, 2000.

Karen Brown,

Deputy Director.

[FR Doc. 00–21622 Filed 8–23–00; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081800E]

Fishing Capacity Reduction Program Advanced Referenda and Other Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 23, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Richard Roberts, OFA1x1, Station 8118, NOAA, 1305 East West Highway, Silver Spring, MD 20910 (301-713-3525, ext. 115).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration (NOAA) conducts a program to reduce excess fishing capacity by paying fishermen to (1) surrender their fishing permits, or (2) to both surrender their permits and either scrap or restrict their vessel titles to prevent fishing. The bulk of the information requirements associated with this program are approved under OMB Control Number 0648-0376. In May of 2000, however, NOAA obtained emergency clearance from OMB to conduct advanced referenda concerning buyback programs. Certain other existing requirements were clarified. NOAA is now requesting OMB for regular Paperwork Reduction Act approval for these requirements.

II. Method of Collection

Hard copies of material will usually be submitted.

III. Data

OMB Number: 0648-0413.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations, individuals and households.

Estimated Number of Respondents: 800.

Estimated Time Per Response: 4 hours.

Estimated Total Annual Burden Hours: 3,200.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency 'sestimate of the burden (including hours and cost) of the proposed collection of information; (c)ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 17, 2000

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–21680 Filed 8–23–00; 8:45 am]

Billing Code: 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081800C]

Individual Fishing Quota (IFQ) Prior Notice of Landing Report

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed information collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 23, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, Telephone number 907–586–7008.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service is requesting comments on a revision to a collection of information that supports the Individual Fishing Quota (IFQ) Program for fixed-gear Pacific halibut and sablefish fisheries off Alaska. Vessel operators would be required to report IFQ regulatory area on the IFQ Prior Notice of Landing (PNOL) report in addition to the currently required information about the anticipated IFQ offload.

II. Method of Collection

An IFQ vessel operator provides the information by telephone to a NOAA Enforcement Officer or U.S. Coast Guard Officer prior to IFQ offloading.

III. Data

OMB Number: 0648–0272.

Form Number: None.
Type of Review: Regular submission.
Affected Public: Business and other for-profit organizations.
Estimated Number of Respondents: 4,700.
Estimated Time Per Response: 8 seconds for added data element.
Estimated Total Annual Burden Hours: 33.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 17, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–21682 Filed 8–23–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081700A]

Development of a Code of Conduct for Responsible Aquaculture in the United States Exclusive Economic Zone; Public Workshops

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public workshops.

SUMMARY: NMFS publishes information regarding stakeholder input to the development of a Code of Conduct for Responsible Aquaculture in the U.S. Exclusive Economic Zone (Code of Conduct). It is the purpose of such a Code of Conduct to provide general guidance for siting and operating aquaculture facilities in the Exclusive Economic Zone (EEZ) seaward of coastal state boundaries and authorities. NMFS is holding three workshops to gather information that will be used to develop a draft Code of Conduct. The workshops are open to the public.

DATES: The meeting dates are:
1. Seattle, WA, September 7, 2000, 10 a.m.–3 p.m.
2. Danvers, MA, September 14, 2000, 10 a.m.–3 p.m.
3. Galveston, TX; September 20, 2000, 10 a.m.–3 p.m.

ADDRESSES: The workshop locations are:
1. Seattle: National Marine Fisheries Service, NMFS, Northwest Fisheries Science Center, 2725 Montlake Boulevard E., Seattle, WA. 98112.
2. Danvers: King's Grant Inn, Route 128 at Trask Lane, Danvers, MA 01923
3. Galveston: National Marine Fisheries Service, Galveston Laboratory, 4700 Avenue U, Galveston, TX 77551.

FOR FURTHER INFORMATION CONTACT: Edwin Rhodes at (301) 713–2334 or Colin Nash at (360) 871–8309. For specific workshop information contact: Seattle, WA, Colin Nash, (360) 871–8309; Danvers, MA, Harry Mears, (978) 281–9243; Galveston, TX, Roger Zimmerman, (409) 766–3500.

SUPPLEMENTARY INFORMATION:

Background

NMFS has Federal responsibility for the living marine resources of the United States. Under authorities of the Magnuson-Stevens Fishery Conservation and Management Act, NMFS has responsibility for Federally managed species and for the conservation and enhancement of essential fish habitat in the zone seaward of coastal state boundaries to the 200 nautical mile limit of the EEZ. NMFS has additional responsibilities for threatened and endangered species and for marine mammals under authorities of the Endangered Species Act and the Marine Mammal Protection Act. NMFS anticipates increasing aquaculture activity in the EEZ. In order to provide guidance to potential users of the U.S. EEZ for aquaculture, NMFS, with broad stakeholder input, will produce a Code of Conduct for Responsible Aquaculture in the United States Exclusive Economic Zone. It is the purpose of such a Code of Conduct to provide general guidance to the aquaculture industry for siting and operating aquaculture facilities in this zone, and to provide NMFS with a framework that can be used to ensure a more consistent review of aquaculture projects that require agency actions. NMFS may also use the Code of Conduct as a starting point for the development of regulatory standards in the future.

The United States was an active participant in the 1993-1995 consultations that led to the adoption by the Food and Agriculture Organization of the United Nations (FAO) of the Code of Conduct for Responsible Fisheries (FAO Code). While the FAO Code is a voluntary and non-binding instrument, the United States has consistently supported its usefulness as an internationally agreed upon statement of principles that should govern the policies of FAO members in all sectors of the fishing industry, including aquaculture, which is addressed in Article 9 of the FAO Code. Although the Code of Conduct being developed for the U.S. EEZ does not have to follow the FAO model, the FAO Code is an important reference instrument. A copy of the aquaculture section (Article 9) of the FAO Code can be obtained from the contact persons listed here, and can be found on the internet at http://www.fao.org/fi/agreem/codecond/ficonde.asp

NMFS will develop the Code of Conduct in steps. The first step is to get stakeholder input in September, 2000, to assist in Code of Conduct development. NMFS, in consultation with other Federal agencies with authorities in Federal waters, will consider this stakeholder input in producing a draft Code of Conduct, which will be made available for public comment through a **Federal Register** notice early in 2001. Public comments will be addressed in formulating a final Code of Conduct, which will be published in the **Federal Register** before January, 2002.

Regional Workshops

NMFS will hold three regional workshops to receive stakeholder input for development of the Code of Conduct. NMFS seeks input on the scope, content, specificity and use of a Code of Conduct that can be used to help guide aquaculture development in the EEZ. Areas for discussion include, but are not limited to, species choices, siting, transboundary considerations, design and construction of facilities, disease prevention and control, feeds and feeding protocols, effluents and pollution,interactions with wild species and protected resources, general operations, stock enhancement, use conflict resolution, and on-shore impacts. The workshops are open to all interested persons.

Special Accommodations

The workshops will by physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Edwin Rhodes at least 5 days prior to the meeting date.

Dated: August 21, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–21678 Filed 8–23–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081700D]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its Advisory Panel (AP) Selection Committee (closed), Shrimp Committee, Controlled Access Committee, Snapper Grouper Committee, Habitat Committee, Marine Reserves Committee, Dolphin Wahoo Committee and a joint meeting of the Executive and Finance Committees. Public comment periods will be held on the proposed Dolphin Wahoo Fishery Management Plan (FMP) and the Bycatch Reduction Device (BRD) Testing Protocol Manual. There will also be a Council Session.

DATES: The meetings will be held from September 18–22, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: (843) 571–1000 or 1–800–334–6660.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366; fax: (843) 769–4520; email: kim.iverson@noaa.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

September 18, 2000, 1:30 p.m.–3:30 p.m.—Joint Executive/Finance Committee Meeting;

The Executive and Finance Committees will meet jointly to review an update on the CY (Calendar Year) 2000 budget, review and approve the proposed CY 2001 activities schedule, budget and Operations Plan. The committees will also discuss Atlantic Coastal Cooperative Statistic Program (ACCSP) funding.

September 18, 2000, 3:30 p.m.–5:00 p.m.—Advisory Panel Selection Committee (closed);

The Advisory Panel Selection Committee will meet to review membership applications and develop recommendations.

September 19, 2000, 8:30 a.m. to 10:00 a.m.—Shrimp Committee Meeting;

The Shrimp Committee will meet to develop recommendations on the revised NMFS BRD Protocol, review input from the Rock Shrimp AP and discuss controlled access for the rock shrimp fishery, develop recommendations for the Controlled Access Committee, review the proposal to use traps to fish for royal red shrimp in the Exclusive Economic Zone and develop a committee recommendation.

September 19, 2000, 10:00 a.m.–12:00 noon—Controlled Access Committee Meeting;

The Controlled Access Committee will meet to hear a presentation on vessel capacity issues and develop committee recommendations regarding vessel capacity issues. The Committee will also develop options for rock shrimp controlled access and provide direction to Council staff.

September 19, 2000, 1:30 p.m.–5:00 p.m.—Snapper Grouper Committee Meeting;

The Snapper Grouper Committee will meet and hear an update on Maximum Sustainable Yield and overfishing definitions, discuss the status of the red porgy assessment and projections peer review, and review the status of data available on the harvest of snapper grouper species with powerheads.

September 20, 2000, 8:30 a.m.–10:30 a.m.—Habitat Committee Meeting;

The Habitat Committee will meet to review and comment on permits as required, hear a report on the Habitat Advisory Panel meeting, discuss development of an ecosystem plan and discuss development of a beach renourishment policy.

September 20, 2000, 10:30 a.m.–12:00 noon, 1:30 p.m.–2:30 p.m.—Marine Reserves Committee Meeting;

The Marine Reserves Committee will meet to review informal meeting, public scoping meeting and Marine Reserves AP input and comments and develop recommendations to Council and staff, develop Committee recommendations on the Gray's Reef Memorandum of Understanding (MOU), develop Committee comments/recommendations on NMFS White Paper and discuss the closed area law suit in the Gulf of Mexico.

September 20, 2000, 2:30 p.m.–5:30 p.m.—Dolphin Wahoo Committee Meeting;

The Dolphin Wahoo Committee will meet to review comments on the Dolphin Wahoo FMP from the public hearings, written material received, advisory panel members and NMFS. The Committee will also review Gulf and Caribbean Council actions.

September 21, 2000, 8:30 a.m.–12:00 noon—Dolphin Wahoo Committee Meeting (continued);

The Dolphin Wahoo Committee will continue its meeting and develop final Committee recommendations on the Dolphin Wahoo Fishery Management Plan.

September 21, 2000, 1:30 p.m.–6:15 p.m.—Council Session;

From 1:30 p.m.–1:45 p.m., the Council will call the meeting to order, adopt the agenda and approve minutes from the June 2000 meeting.

From 1:45 p.m.–2:15 p.m., the Council will hold elections to decide on a new Chairman and Vice-Chairman and make presentations.

From 2:15 p.m.- 2:45 p.m., the Council will hear a Coast Guard presentation from Admiral Allen.

From 2:45 p.m.–3:15 p.m., the Council will consider a request from the South Carolina Aquarium for an extension of their Exempted Fisheries Permit (EFP).

From 3:15 p.m.–5:15 p.m., the Council will hold a public comment period regarding the Dolphin Wahoo FMP (beginning at 3:15 p.m.), hear a report from the Dolphin Wahoo Committee, finalize the FMP and approve it for submission to the Secretary of Commerce.

From 5:15 p.m.–5:45 p.m., the Council will hold a public comment period on the BRD Testing Protocol Manual (beginning at 5:15 p.m.), hear a report from the Shrimp Committee, finalize and approve the revised BRD Testing Protocol Manual and make a decision on the proposal to use traps to fish for royal red shrimp.

From 5:45 p.m.–6:15 p.m., the Council will hear a report from the Executive/Finance Committee, approve CY 2001 Activities Schedule, approve the CY

2001 budget and approve the Council Operations Plan.

September 22, 2000, 8:30 a.m.–12:30 p.m.—Council Session

From 8:30 a.m.–8:45 a.m., the Council will hear a report from the Advisory Panel Selection Committee and appoint new advisory panel members.

From 8:45 a.m.–9:00 a.m., the Council will hear a report from the Snapper Grouper Committee.

From 9:00 a.m.–9:30 a.m., the Council will hear a report from the Controlled Access Committee, make recommendations on vessel capacity issues and make a decision on proceeding with rock shrimp controlled access.

From 9:30 a.m.–9:45 a.m., the Council will hear a report from the Habitat Committee and consider permits as required.

From 9:45 a.m.–10:15 a.m., the Council will hear a report from the Marine Reserves Committee, take action on considering the Gray's Reef MOU, develop comments and recommendations on the NMFS White Paper and direct Council staff on how to proceed.

From 10:15 a.m.–10:45 a.m., the Council will hear a presentation on the Southeast Region's Permitting System.

From 10:45 a.m.–11:15 a.m., the Council will hear a report on the southeastern shark drift net fishery.

From 11:15 a.m.–11:30 a.m., the Council will hear an update on ACCSP.

From 11:30 a.m.–12:00 noon, the Council will hear updates on economic and social issues.

From 12:00 noon–12:30 p.m., the Council will hear NMFS Status Reports on 2000/2001 Mackerel Framework, Mackerel Amendment 12, Greater Amberjack trip limit resubmittal and Georgia Special Management Zones (SMZs). Council will also hear NMFS Status Reports on Landings for Atlantic king mackerel, Gulf king mackerel (eastern zone), Atlantic Spanish mackerel, Snowy grouper & Golden tilefish, wreckfish, greater amberjack and south Atlantic Octocorals.

From 12:30 p.m.–1:00 p.m., Council will hear agency and liaison reports and discuss other business and upcoming meetings.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 8, 2000.

Dated: August 17, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–21683 Filed 8–23–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081100C]

Permits; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of foreign fishing application.

SUMMARY: NMFS publishes for public review and comment a summary of an application submitted by the Government of Lithuania requesting authorization to conduct fishing operations in the U.S. Exclusive Economic Zone (EEZ) in 2001 under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

ADDRESSES: Comments may be submitted to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910; and/or to the Regional Fishery Management Councils listed below:

Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01905, Phone (978) 465-0492, Fax (978) 465-3116;

Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19904, Phone (302) 674-2331, Fax (302) 674-4136.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713-2276.

SUPPLEMENTARY INFORMATION: In accordance with a Memorandum of Understanding with the Secretary of State, NMFS publishes, for public review and comment, summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to fish in the U.S. EEZ under provisions of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*).

This notice concerns the receipt of an application from the Government of Lithuania requesting authorization to conduct joint venture (JV) operations in 2001 in the Northwest Atlantic Ocean for Atlantic mackerel and Atlantic herring. The large stern trawler/processors MAIRONIS and UTENA are identified as the Lithuanian vessels that would receive Atlantic mackerel and Atlantic herring from U.S. vessels in JV operations. The application also requests that the Government of Lithuania be allocated 2,000 metric tons (mt) of Atlantic mackerel and 1,000 mt of Atlantic herring for harvest by the named vessels in 2001.

Dated: August 16, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. 00–21544 Filed 8–23–00; 8:45 am]

Billing Code: 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Admissions announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 23, 2000.

ADDRESSES: Written comments and recommendations on the proposed

information collection should be sent to United States Air Force Academy, Office of Admissions, 2304 Cadet Drive, Suite 236, USAFA, CO 80840.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to the above address, or call United States Air Force Academy, Office of Admissions, (719) 333–7291.

Title, Associated Form, and OMB Number: Air Force Academy Secondary School Transcript, USAFA Form 148, OMB Number 0701–0066.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 3,477.

Number of Respondents: 6,954.

Responses per Respondent: 1.

Average Burden per Response: 30 Minutes.

Frequency: 1.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–21651 Filed 8–23–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

Pursuant to the provisions of part 404 of title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Powdermet Inc., a company doing business in Sun Valley, California (CA), an exclusive license in any right, title and interest the Air Force has in U.S. Patent Number 6,033,622 entitled ''Method for Making Metal Matrix Composites.'' The inventor, Benji Maruyama was a government employee at the time of the invention. Mr. Maruyama assigned rights to the Air Force recorded at reel 9549, frames 124 and 125.

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to Mr. Randy Heald, Associate General Counsel (Acquisition), SAF/GCQ, 1500 Wilson Blvd., Suite 304, Arlington, VA 22209–2310. Mr. Heald can be reached at 703–588–5091 or by fax at 703–588–8037.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–21652 Filed 8–23–00; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Deglycosylated Ricin Toxin A-Chain Vaccine

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/523,271 entitled ''Deglycosylated Ricin Toxin A-Chain Vaccine'', filed March 10, 2000. This patent application has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A vaccine comprising deglycosylated ricin toxin A-chain and method for making and using the composition.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–21657 Filed 8–23–00; 8:45 am]

BILLING CODE 3710–08–U

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Overcoming Interference in Alphavirus Immune Individuals

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/082,357 entitled ''Overcoming Interference in Alphavirus Immune Individuals'', filed May 20, 1998. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: This invention is a method for overcoming alphavirus vaccine interference in alphavirus-immune subjects by administration of a second alphavirus vaccine which is altered such that it is not accessible to interfering antibodies. Examples of such alterations are described as well as evidence showing that alphavirus interference likely results from the binding of interfering antibodies to viral proteins expressed on infected cells thereby causing lysis of infected cells.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–21655 Filed 8–23–00; 8:45 am]

BILLING CODE 3710–08–U

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Protective Monoclonal Antibody Against Botulinum Neurotoxin Serotype F

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 08/504,969 entitled ''Protective Monoclonal Antibody Against Botulinum Neurotoxin Serotype F'', filed July 20, 1995. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The subject application invention relates to a monoclonal antibody protective against botulinum neurotoxin serotype F, and to methods of preparation and use thereof.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–21659 Filed 8–23–00; 8:45 am]

BILLING CODE 3710–08–U

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Self-Piercing Pulse Oximeter Sensor Assembly

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/389,347 entitled ''Self-Piercing Pulse Oximeter Sensor Assembly'', filed September 3, 1999. Foreign rights are also available. This patent application has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR-JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A self-piercing pulse oximeter sensor for attachment to a subject. The device includes a flexible pulse oximeter sensor, an earring post, and a grommet. The earring post may be used as a piercing device if there is not a pierced body part suitable for attaching the pulse oximeter sensor to the body. Otherwise the earring post may be slid into the pierced hole. In either case, the tip of the earring post engages a grommet once passing through the body part. Thus, the pulse oximeter sensor functions in a transilluminance mode by transmitting light through the pierced body part.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–21656 Filed 8–23–00; 8:45 am]

BILLING CODE 3710–08–U

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Treatment or Prophylaxis of Retinal Pathology and Spinal Cord Injury

AGENCY: U.S. Army Medical Research and Materiel Command, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial Number 09/133,805 entitled ''Treatment or Prophylaxis of Retinal Pathology and Spinal Cord Injury'', filed August 13, 1998. Foreign rights are also available. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention is related to use of PMPA, α-NAAG and β-NAAG to prevent and treat conditions arising from exposure of neuronal tissue to toxins, injury, ischemia and hypoxia. Target tissues include the brain, spinal cord and retina.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–21658 Filed 8–23–00; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare Draft Supplement No. 1 to the Final Environmental Impact Statement [FEIS] for Operation and Maintenance, Lake Greeson, Lake Ouachita, and DeGray Lake, Arkansas

AGENCY: U.S. Army Corps of Engineers, Vicksburg District, DOD.

ACTION: Notice of intent.

SUMMARY: The purpose of the proposed action is to evaluate the environmental impacts of the U.S. Army Corps of Engineers proposed continued operation and maintenance activities at Lake Greeson, Lake Ouachita, and DeGray Lake, Arkansas.

FOR FURTHER INFORMATION CONTACT: Mr. Wendell King (telephone (601) 631–5967), CEMVK–PP–PQ, 4155 Clay Street, Vicksburg, Mississippi 39183–3435.

SUPPLEMENTARY INFORMATION: Lake Greeson, Lake Ouachita, and DeGray Lake are part of a comprehensive plan for flood control, navigation, and hydroelectric power production for the Ouachita River Basin. Lake Greeson is located on the Little Missouri River in Pike County, Arkansas, 6 miles north of Murfreesboro, and 64 miles southwest of Hot Springs. Lake Ouachita is located on the Ouachita River in Garland and

Montgomery Counties, Arkansas, 13 miles west of Hot Springs. DeGray Lake is located on the Caddo River in Clark and Hot Spring Counties, Arkansas, 8 miles north of Arkadelphia.

Lake Greeson was authorized by the Flood Control Act of 18 August 1941, Public Law 228, 77th Congress, 1st Session, as amended by the Flood Control Act of 22 December 1944. It is now officially named ''Narrows Dam-Lake Greeson.'' Lake Ouachita was authorized by the Flood Control Act of 22 December 1944, Public Law 534, 78th Congress, Chapter 655, 2nd Session, House Report No. 4485, which adopted the plan as set forth in House Document No. 647. It is now officially ''Blakely Mountain Dam-Lake Ouachita.'' DeGray Lake was authorized by Congress in the Rivers and Harbors Act of 1950.

The authorized purposes of Lake Greeson and Lake Ouachita are flood control and hydroelectric power production. This authority was amended by Section 4 of the Flood Control Act of 1944 to include public recreation on these projects. Authority to construct, maintain, and operate public parks and recreational facilities at water resource development projects under the control of the Department of the Army was granted under section 207 of the Flood Control Act of 1962. The authorized purposes of DeGray Lake are flood control, hydroelectric power, water supply, navigation, and recreation. Lake Greeson became operational in 1950; Lake Ouachita became operational in 1953; and DeGray Lake was placed into operation in 1972.

The FEIS for Operation and Maintenance, Lake Greeson, lake Ouachita, and DeGray Lake, Arkansas, was completed by the Corps in September 1977. The proposed action will evaluate the environmental impacts of Corps continued conduct of operation and maintenance activities in support of the authorized project purposes for the lakes.

The significant issues tentatively identified for evaluation of the environmental impacts of operation and maintenance activities include (1) impacts of flood control storage, (2) impacts of hydroelectric generation, (3) impacts to water supply storage, and (4) impacts to resource management, including concession expansions.

The National Environmental Policy Act (40 CFR part 1501.7) requires all Federal agencies preparing EIS's to conduct a process termed ''scoping.'' This scoping process determines the issues to be addressed and identifies the significant issues related to a proposed action. To accomplish this, public scoping meetings are tentatively scheduled to be held in Arkansas in September 2000. The Environmental Protection Agency, U.S. Fish and Wildlife Service, Natural Resources Conservation Service, Arkansas Department of Environmental Quality, and Arkansas Game and Fish Commission will be invited to become cooperating agencies. All interested agencies, groups, tribes,and individuals will be sent copies of the Draft Supplemental EIS and FEIS.

The Draft Supplemental EIS is scheduled to be completed in October 2001.

Robert Crear,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 00–21654 Filed 8–23–00; 8:45 am]

BILLING CODE 3710–PU–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–438–000]

Columbia Gas Transmission Corporation; Filing

August 18, 2000.

Take notice that on August 14, 2000, Columbia Gas Transmission Corporation (Columbia) filed an application requesting permission under NGA Section 7(b) to abandon by sale 3.54 BCF of base gas located in Columbia's Storage system. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

It is stated that operational efficiencies within various Storage Fields have reduced Columbia's need to maintain the historic levels of base gas. The disposition of proceeds from the proposed sale of the base gas will be made pursuant to Section C, of Article IV, of Stipulation II of the Settlement in Docket No. RP95–408 Columbia Gas Transmission Corp., 79 FERC Paragraph 61,044 (1997). This settlement defines future additional sales of base gas no longer needed by Columbia as a result of more efficient operation of its storage fields. Columbia will comply with the annual reporting requirements provided for in Section D of Article IV.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211 or Section 385.214). All such motions to intervene or protest should be filed on or before September 8, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 00–21602 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–434–000]

Columbia Gulf Transmission Company; Application

August 18, 2000.

Take notice that on August 9, 2000, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77057–5637, filed in Docket No. CP00–434–000 an application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act for permission and approval for Columbia Gulf to construct and operate certain replacement natural gas facilities and to abandon the facilities being replaced due to the age and condition of the facilities, located in Powell County, Kentucky, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Columbia Gulf proposes to construct and operate one 14,470 horsepower (HP) compressor unit and appurtenances and abandon one 12,050 HP compressor unit and appurtenances, located in Powell County, Kentucky.

Columbia Gulf states that the unit proposed for replacement, designated as Columbia Gulf's Unit 105, is part of their Stanton Compressor Station, which currently consists of six compressor units. Columbia Gulf asserts that the unit is a Pratt and Whitney GG3C–1 gas turbine unit with a rating of 12,050 HP, constructed and placed in service in 1964, under the authority granted in Docket No. CP64–1.

Columbia Gulf states that due to the age of the unit, replacement parts are not readily available, making repairs and maintenance difficult. Columbia

declares that due to its age, obsolescence, and deterioration, replacement is required in order to ensure safe, reliable operation and service to Columbia Gulf's existing customers at current levels.

Columbia Gulf proposes to replace the existing compressor unit with a Solar Mars 100–T15000S turbine driven compressor unit, to be designated as Columbia Gulf's Unit 108, with a rating of 14,470 HP. Columbia Gulf asserts that the construction of the new unit will be within the existing compressor station site and the replacement will not change the design day/certificated capacity of 2,156,334 Mmcf/d winter, and 2,056,334 Mmcf/d summer.

Columbia Gulf states that the proposed construction is estimated to cost $13,000,000 and the associated net debit to accumulated provision for depreciation for the abandonment is $1,702,000. Columbia Gulf asserts that upon completion of the construction, the existing unit will be removed. Columbia Gulf states that the proposed age and condition replacement qualifies for rolled-in rate treatment under the Commission's *Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines*, 71 FERC Paragraph 61,241 (1995) (Pricing Policy Statement) as interpreted by the Commission in *Columbia Gas Transmission Corp.*, 75 FERC Paragraph 61,158 (1996). Therefore, Columbia Gulf requests all project costs should be permitted rolled-in treatment in Columbia Gulf's next rate case.

Any questions regarding the application should be directed to Lee M. Beckett, Counsel at (713) 267–4741 (voice) and (713) 267–4755 (telecopier), Columbia Gulf Transmission Company, 2603 Augusta, Suite 125, Houston, Texas 77057–5637.

Any person desiring to be heard or to make any protest with reference to said Application should on or before September 8, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–21604 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–389–001]

Cove Point LNG Limited Partnership; Notice of Tariff Filing

August 18, 2000.

Take notice that on August 15, 2000, Cove Point LNG Limited Partnership (Cove Point) tendered for filing Substitute Original Sheet No. 7 to Second Revised Volume No. 1 of its FERC Gas Tariff. The proposed effective date of the enclosed tariff sheet is June 14, 2000.

Cove Point states that the purpose of the instant filing is to replace the tariff sheet accepted by a letter order issued August 8, 2000 which was inadvertently filed in the referenced docket without reflecting Cove Point's fuel retainage percentages accepted by the letter order issued March 24, 2000 in Docket No. RP00–210–000. In order to reflect the correct fuel retainage percentages, Cove Point is submitting Substitute Original Sheet No. 7 to replace the current effective Original Sheet No. 7.

Cove Point respectfully requests that the Commission grant a waiver of the notice requirements in Section 154.207 of its regulations, and any other waivers that may be necessary, in order that the tariff sheets be made effective as proposed herein.

In accordance with the provisions of Section 154.23(d) of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Cove Point's main office at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21594 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–437–000]

El Paso Natural Gas Company; Application

August 18, 2000.

Take notice that on August 11, 2000, El Paso Natural Gas Company (El Paso), a Delaware corporation, whose mailing address is Post Office Box 1492, El Paso, Texas, 79978, filed an application at Docket No. CP00–437–000, pursuant to Sections 7(b) of the Natural Gas Act (NGA) and Sections 157.7, et seq., of the Federal Energy Regulatory Commission's (Commission) Regulations under the NGA, for permission and approval to transfer to El Paso Field Services Company (Field Services) certain existing compression facilities, with appurtenant facilities, and the related service at the Waha Compressor Station located in Reeves County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222).

El Paso requests expedited treatment of the abandonment application to facilitate the transfer of the subject compression facilities and to provide for a seamless operational transition.

El Paso indicates that on November 10, 1999, the Commission issued an order in response to the Williams Field Services Group, Inc. (Williams) compliant at Docket No. RP99–471–000. El Paso also indicates that the Commission found that the ''A'' Plant at El Paso's Blanco Compressor Station in San Juan County, New Mexico was properly functionalized as a transmission facility, but the ''C'' and ''D'' Plants, which El Paso had functionalized as transmission facilities, were in fact performing primarily a gathering function. Further, El Paso indicates that subsequently, in an Order Denying Rehearing issued on April 25, 2000, the Commission denied all requests for rehearing.

In recognition of the Commission's analysis, orders, and counsel in the Blanco Complaint Proceeding at Docket No. RP99–471–000, El Paso states that it has evaluated the existing compression facilities at its Waha Compressor Station. Additionally, El Paso states that certain shippers on El Paso's system expressed concerns regarding the functionalization of facilities and the allocation of costs for the Waha Compressor Station. El Paso submits that those shippers raised concerns similar to those raised in Docket No. RP99–471–000, i.e., that El Paso should have functionalized and spundown additional facilities and costs to El Paso's gathering affiliate. In response to those concerns, and based on El Paso's subsequent review of the facilities and operations at the Waha Compressor Station, El Paso says that it has agreed certain changes to the functionalization of the facilities at the Waha Compressor Station are appropriate. El Paso states that it has determined that certain compressor facilities at the Waha Compressor Station possess a similar physical configuration to the Blanco ''C'' and ''D'' Plants (i.e., located upstream of transmission facilities delivering directly into the mainline), operate at similar pressures (150 to 300 psia) and provide similar services as the Blanco ''C'' and ''D'' Plants (i.e., field related services vs. transmission related services).

Specifically, El Paso submits that it has determined the following facilities at the Waha Compressor Station to be consistent with the Commission's findings for the Blanco ''C'' and ''D'' Plants (performing primarily a gathering service): (1) One General Electric Frame 5 Gas Turbine and one ''sour gas'' compressor unit, comprising a total of 26,250 ISO horsepower; and (2) interconnecting drive units, with appurtenant piping and related equipment (Waha Field Compression Facilities). As a consequence, El Paso states that it does not desire to own and operate these Waha Field Compression Facilities as ''gathering facilities'' since the ownership and operation of the gathering facilities by El Paso would not be consistent with its past corporate restructuring which involved the spin-down of gathering facilities to Field Services.

El Paso says that it believes that the abandonment of these compression facilities by transfer to Field Services will provide for a smooth, seamless transition of services without any interruption in service or rate stacking, which would occur if the compression facilities were acquired by a third party. Further, El Paso says that such abandonment is consistent with El Paso's spin-down of facilities to Field Services, which was approved by the Commission at Docket No. CP94–183–000. Finally, El Paso says that it is El Paso's understanding that upon transfer of the Waha Field Compression Facilities, Field Services will continue to deliver the same volumes of natural gas at the required mainline pressure at the existing custody transfer point immediately downstream of the Saha Treating Plant.

El Paso says that it will continue to own and cause the operation of its remaining compression facilities located at the Waha Compressor Station for jurisdictional transmission service.

Any questions regarding the application should be directed to Mr. A.W. Clark, Vice President, El Paso Natural Gas Company, Post Office Box 1492, El Paso, Texas 79978 at (915) 496–2600.

Any person desiring to be heard or to make any protest with reference to said document should, on or before September 8, 2000, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a protest or motion to intervene in accordance with the requirements of Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's Rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Commission and will receive copies of all documents filed by the Applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be

unnecessary for El Paso to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–21603 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2924–000 and ER00–2924–001]

Green Valley Hydro, LLC; Notice of Issuance of Order

August 18, 2000.

Green Valley Hydro, LLC (Green Valley) submitted for filing a rate schedule under which Green Valley will engage in wholesale electric power and energy transactions at market-based rates. Green Valley also requested waiver of various Commission regulations. In particular, Green Valley requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Green Valley.

On August 17, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Green Valley should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Green Valley is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Green Valley's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 18, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21662 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–359–001]

Koch Gateway Pipeline Company; Compliance Filing

August 18, 2000.

Take notice that on August 11, 2000, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets, to become effective July 31, 2000.

Fifth Revised Volume No. 1
Substitute Fourth Revised Sheet No. 4000
Substitute Second Revised Sheet No. 4001
Substitute Original Sheet No. 4002

Koch states that it filed the above reference tariff sheets in compliance with the Commission's Order Accepting Tariff Sheets, Subject to Conditions, issued on July 26, 2000, in Docket No. RP00–359. The proposed tariff changes allow for an Internet auction process created for its Interruptible Storage Service (ISS) and its Parking and Lending Service (PAL).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21597 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–99–000]

Maine Public Utilities Commission, Complainant v. ISO New England, Inc. Respondent; Notice of Complaint

August 18, 2000.

Take notice that on August 17, 2000, the Maine Public Utilities Commission (MPUC), tendered for filing a complaint under sections 206 and 306 of the Federal Power Act petitioning the Commission for an order directing ISO New England (ISO–NE) to recalculate the clearing price of Energy for Trading Intervals 13–17 on May 8, 2000 to exclude the bid price for energy purchased from a supplier in New York State under an ICAP-Energy 2 bilateral contract. The complaint alleges that the clearing price resulting from ISO–NE's inclusion of the referenced external contract as a qualifying source resulted in a market clearing price inconsistent with Market Rules 4 and 5 and Operating Procedure 9 and, thus, in violation of the field rate doctrine. Alternatively, the complaint argues, the $6000 clearing price is in violation of the filed rate because the ISO did not fulfill it obligation under Market Rule 17 to monitor and mitigate where appropriate to ensure that the markets function properly. For this reason, the compliant requests that the clearing price be recalculated to substitute a default bid that the ISO should have imposed, such as the $1100/MWh clearing price identified in its June 12, 2000 emergency rule filing.

In addition, the MPUC complains that Market Rule 15 is no longer just and reasonable and proposes revisions to Market Rule 15 to restore the ISO's ability to identify and correct, within a limited time frame, prices that result from market design flaws.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and

protests should be filed on or before September 7, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Answers to the complaint shall also be due on or before September 7, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–21663 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–190–002]

National Fuel Gas Distribution Corporation; Compliance Filing

August 18, 2000.

Take notice that on July 31, 2000, National Fuel Gas Distribution Corporation (Distribution) filed a report to comply with a Commission order issued March 30, 2000 in Docket No. RP99–190–001. The filing reports on Distribution's efforts to develop new facilities and services that do not require waiver of the Commission's shipper must have title policy.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21599 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–363–002]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

August 18, 2000.

Take notice that on August 11, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective August 1, 2000.

Natural states that these tariff sheets were filed in compliance with the Federal Energy Regulatory Commission's (Commission) ''Order Accepting and Suspending Tariff Sheets Subject to Conditions'' issued July 27, 2000 in Docket No. RP00–363–000 (Order) related to Natural's implementation of new Rate Schedule FFTS (Flexible Firm Transportation Service).

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted herein to become effective August 1, 2000, consistent with the Order.

Natural states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. RP00–363.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provide din Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21596 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–370–001]

Northern Natural Gas Company; Notice of Compliance Fling

August 18, 2000.

Take notice that Northern Natural Gas Company (Northern), on August 11, 2000, tendered for filing in its F.E.R.C. Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet proposed to be effective June 30, 2000:

Fifth Revised Volume No. 1

Substitute Third Revised Sheet No. 299A

The purpose of this filing is to comply with the Commission's Order issued on July 28, 2000 in Docket RP00–370–000. Northern is filing the revised tariff sheet to clarify that the highest rate a Shipper must match to continue its service agreement is the maximum tariff rate.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21595 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–212–002]

NUI Corporation (City Gas Company of Florida Division) v. Florida Gas Transmission Company; Notice of Proposed Compliance Filing

August 18, 2000.

Take notice that on August 14, 2000, Florida Gas Transmission Company (''FGT'') tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1 (''Tariff'') effective August 25, 2000, the following tariff sheets:

Substitute First Revised Sheet No. 186
Substitute Fifth Revised Sheet No. 187

FGT states that on March 8, 2000, NUI Corporation (City Gas Company of Florida Division) (NUI) filed a complaint contending that FGT violated applicable Commission policy, as well as FGT's tariff, by not permitting NUI to reduce its contract demand selectively by season in matching a bid submitted under FGT's Right-of-First-Refusal (''ROFR'') procedures. Subsequently, on July 14, 2000, the Commission issued an order in the referenced docket (''July 14 Order'') requiring FGT to clarify shippers' rights to uniformly reduce contract demand when exercising their ROFR rights. In compliance with the Commission's July 14 Order, on July 27, 2000, FGT filed tariff sheets (''July 27 Filing'') adding tariff language allowing shippers exercising ROFR rights to reduce contract demand by either a uniform percentage reduction for each season or by the same absolute volume amount in each season.

In response to FGT's filing, several shippers protested FGT's inclusion in proposed tariff language the phrase ''that does not require its entire contract quantities to serve its core customers.'' The protesting shippers stated that the phase was ambiguous, limited the rights of certain shippers to reduce their contract quantities and was beyond the scope of the Commission's Order. FGT states that it did not intend to limit the rights of shippers in the ROFR process in any way, but included this phrase as a result of the issues raised in the NUI complaint proceeding. However, after reviewing the protests, FGT states that it agrees that the language could be interpreted as limiting ROFR rights. In the instant filing, FGT states that it is refiling tariff language to comply with the Commission's July 14 Order, but without the language that has been interpreted as limiting shipper's rights of reduction in the ROFR process.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21598 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–212–003]

NUI Corporation (City of Gas Company of Florida Division) v. Florida Gas Transmission Company; Notice of Filings

August 21, 2000.

Take notice that on August 14, 2000, Florida Gas Transmission Company (FGT), and Enron North America Corp. (ENA) each tendered for filing in the above referenced docket to comply with the requests for information in the Commission's Order on Complaint, Requiring Tariff Filing, And Requiring Filing of Information (Order on Complaint) issued on July 14, 2000, in this proceeding.[1]

FGT and ENA filed information relating to ENA's need for capacity on the FGT system and ENA's decision to submit a bid on an expiring contract of NUI Corporation (City Gas Company of Florida Division) (NUI) during the right-of-first-refusal process.

FGT and ENA both request privileged and confidential treatment for some of the filed information because they assert the information sought relates to both FGT's and ENA's on-going business and personnel matters and, therefore, is proprietary and sensitive and would cause FGT, or its customers, and ENA substantial competitive harm if disclosed. Accordingly, FGT and ENA request that the Commission treat their respective filings and the information contained therein as confidential and proprietary and not disclose such information, or require FGT or ENA to disclose such information to third parties pursuant to § 388.112 of the Commission's Regulations.

It is not clear from the filings whether FGT or ENA has served a redacted copy of their filings on the parties to the proceeding. As set forth in § 385.213(c)(5)(ii) of the Commission's regulations, FGT and ENA must provide a redacted copy of its filing without the privileged information to all parties on the official service list. In addition, both FGT and ENA must provide each party with a proposed form of protective agreement.

Under the July 14, 2000 order, parties were to have thirty days from the date of the filings within which to file a response to the FGT and ENA filings. The time period will be extended to October 13, 2000 to permit sufficient time to execute protective agreements and review the filings. Copies of these filings are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (Call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–21665 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 92 FERC ¶61,044 (2000).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–3109–000]

NYSD Limited Partnership, et al.; Notice of Issuance of Order

August 18, 2000.

NYSD Limited Partnership, *et al.* (NYSD) submitted for filing a rate schedule under which NYSD will engage in wholesale electric power and energy transactions at market-based rates. NYSD also requested waiver of various Commission regulations. In particular, NYSD requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by NYSD.

On August 17, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates,

granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NYSD should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, NYSD is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NYSD's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 18, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21661 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–436–000]

OneOk Caprock Pipeline Company, OkTex Pipeline Company; Notice of Application

August 21, 2000.

Take notice that on August 11, 2000, OneOk Caprock Pipeline Company (Caprock), and OkTex Pipeline Company (OkTex), both at 100 West Fifth Street, Tulsa, Oklahoma 74103, tendered for filing in Docket No. CP00–436–000 an application pursuant to section 7(b) and (c) of the Natural Gas Act (NGA) for permission and approval for Caprock to abandon certain pipeline facilities located in Texas and Oklahoma and for OkTex to acquire and operate the same facilities, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Caprock proposes to abandon the Beckham-Wheeler pipeline facilities by merger with OkTex. It is stated that the facilities consist of 1.88 miles of 20-inch pipeline and related facilities located in Beckham County, Oklahoma, and Wheeler County, Texas. It is explained that following the merger Caprock will cease to exist as a natural gas company, and that OkTex will be the surviving entity. It is asserted that following transfer of the facilities to OkTex, Caprock will no longer have any interstate facilities subject to regulation by the Commission, and that Caprock will cancel all tariffs. It is further asserted that OkTex will operate the facilities as part of its interstate system and will assume all service obligations and operational and economic responsibilities for the subject facilities. Caprock and OkTex state that the proposal will allow optimization of system operations and will improve service to customers.

Any questions regarding the application should be directed to C. Burnett Dunn, Attorney, at (918) 595–4816 or Kathleen Mazure at (202) 467–6370, Ext. 1022.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 11, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Caprock or OkTex to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–21666 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–440–000]

Pacific Interstate Offshore Company; Application

August 18, 2000.

Take notice that on August 15, 2000, Pacific Interstate Offshore Company (PIOC), 1021 Main, Suite 2100, Houston, Texas 77002, filed in Docket No. CP00–440–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon all of its facilities and the services provided through those facilities, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

PIOC states that it currently operates facilities consisting of 8.4 miles of 12-inch pipeline, extending from the Platform Habitat in the Pitas Point Field, in the Federal waters, offshore California, to a point onshore near Carpinteria, California, along with a meter, regulator station, and appurtenant facilities. It is indicated that PIOC offers transportation services for shippers under its Part 284 blanket certificate. PIOC indicates that as of September 1, 1999, Nuevo Energy Company (Nuevo) acquired all of the issued and outstanding stock of PIOC from Sempra Energy, and that currently Nuevo, which owns all of the gas produced at the platform and holds all of the surrounding leases, is PIOC's only shipper.

PIOC states that Nuevo requires a reliable and reasonably priced outlet for the gas produced at its Platform Habitat. PIOC submits that, now that Nuevo, a producer, owns the PIOC facilities, the primary function of the facilities is gathering. PIOC has submitted a primary function analysis supporting its claim that its facilities qualify as gathering facilities exempt from jurisdiction under Section 1(b) of the Natural Gas Act.

Any questions regarding the application should be directed to Fred Lindemann, Torch Operating Company, 1221 Lamar, Suite 1600, Houston, Texas 77010 at (713) 753–1368.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 8, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the National Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for PIOC to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–21601 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR00–8–000]

Ultramar Diamond Shamrock Corporation and Ultramar Inc., Complainants v. SFPP, L.P., Respondent; Notice of Complaint

August 18, 2000.

Take notice that on August 17, 2000, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) and the Procedural Rules Applicable to Oil Pipeline Procedures (18 CFR 343.1(a)), Ultramar Diamond Shamrock Corporation and Ultramar Inc. (collectively referred to herein as Ultramar), tendered for filing a Complaint in the captioned proceeding. Ultramar alleges that SFPP, L.P. (SFPP) has violated and continues to violate the Interstate Commerce Act, 49 U.S.C. App 1 et seq. by charging unjust and unreasonable rates as it respects all of SFPP's jurisdictional interstate services associated with its East, West, North, and Oregon Lines as more fully set forth in the complaint.

Ultramar respectfully requests that the Commission: (1) Examine SFPP's challenged rates and charges for all its jurisdictional interstate services and declare that such rates and charges are unjust and unreasonable; (2) order refunds and/or reparations to Ultramar, including appropriate interest thereon, for the applicable refund and/or reparation periods to the extent the Commission finds that such rates and charges are unlawful; (3) determine just, reasonable, and nondiscriminatory rates for all of SFPP's jurisdictional interstate services; (4) award Ultramar reasonable attorney's fees and costs; and (5) order such other relief as may be appropriate.

Ultramar states that it has served the Complaint on SFPP. Pursuant to Rule 343.4 of the Commission's Procedural Rules Applicable to Oil Pipeline Proceedings, SFPP's response to this Complaint is due within 30 days of the filing of the Complaint.

Any person desiring to be heard or to protest such filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 7, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–21660 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–124–000, et al.]

Hartford Power Sales, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

August 17, 2000.

Take notice that the following filings have been made with the Commission:

1. Hartford Power Sales, L.L.C.

[Docket No. EC00–124–000]

Take notice that on August 14, 2000, Hartford Power Sales, L.L.C. filed an application for an order authorizing the proposed transfer of the Power Sales Agreement by and between HPS and The Connecticut Light and Power Company to Select Energy, Inc.

Comment date: September 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Casco Bay Energy Company, LLC, et al.

[Docket No. EC00–125–000]

Take notice that on August 14, 2000, Casco Bay Energy Company, LLC, Duke Energy Oakland, LLC, Duke Energy Trenton, LLC, Duke Energy South Bay, LLC, Duke Energy Morro Bay, LLC, and Duke Energy Moss Landing, LLC (collectively the Applicants), filed a request for approval of the disposition of jurisdictional assets that may result from the transfer of the Applicants' limited liability company membership interests among the Applicants' upstream affiliates.

Comment date: September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Ameren Energy, Inc., on behalf of Union Electric Company d/b/a AmerenUE, et al.

[Docket No. EC00–126–000]

Take notice that on August 14, 2000, Ameren Energy, Inc., on behalf of Union Electric Company d/b/a AmerenUE (AmerenUE), Ameren Energy Generating Company (AEG), and Ameren Energy Marketing Company (AEM) (collectively Applicants), filed an application pursuant to section 203 of the Federal Power Act (FPA), 16 U.S.C. 824b, and Part 33 of the Commission's regulations, requesting that the Commission approve the assignment of certain contracts between Ameren Energy, Inc. as agent for AmerenUE and AEM, so that such assignment would result in AEG being included with AmerenUE and AEM as a principal under such contracts.

Comment date: September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. The FirstEnergy Operating Companies

[Docket Nos. ER97–412–005, ER97–413–004, ER98–1932–002 and ER97–413–001]

Take notice that on August 11, 2000, the FirstEnergy Operating Companies tendered for filing a Supplemental Refund Report to reflect additional refunds made pursuant to the Commission's February 9, 2000 Letter Order in this proceeding.

The FirstEnergy Operating Companies state that a copy of the filing has been served on the customers receiving supplemental refunds and the public utilities commissions of Ohio and Pennsylvania.

Comment date: September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, et al.

[Docket No. ER00–3406–000]

Take notice that on August 14, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing a Service Agreement Nos. 321 and 322 to add NRG Power Marketing Inc. to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is August 11, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER00–3407–000]

Take notice that on August 11, 2000, Cinergy Services, Inc. (Cinergy) and Cleco Utility Group, Inc. (CUG), are requesting via a Notice of Assignment that CUG will replace Cleco Corporation of Cinergy's Market-Based Power Sales Tariff Original Volume No. 7-MB, Service Agreement No. 223, dated May 3, 1999.

Cinergy and CUG are requesting an effective date of one day after filing.

Comment date: September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER00–3409–000]

Take notice that on August 11, 2000, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and TXU Energy Trading Company (TXU) replacing the unexecuted service agreement filed on April 16, 1999 under Docket No. ER99–2511–000 per COC FERC Electric Market-Based Power Sales Tariff, Original Volume No. 7-MB.

COC is requesting an effective date of May 1, 1999 and the same Rate Designation as per the original filing.

Comment date: September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER00–3408–000]

Take notice that on August 11, 2000, Cinergy Services, Inc. (Cinergy) and Cleco Utility Group, Inc. (CUG), are requesting via a Notice of Assignment that CUG will replace Cleco Corporation of Cinergy's Cost-Based Power Sales Tariff Original Volume No. 6–CB, Service Agreement No. 220, dated May 3, 1999.

Cinergy and CUG are requesting an effective date of one day after filing.

Comment date: September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Tucson Electric Power Company

[Docket No. ER00–3410–000]

Take notice that on August 14, 2000, Tucson Electric Power Company tendered for filing one (1) umbrella service agreement (for short-term firm service) pursuant to Part II of Tucson's Open Access Transmission Tariff, which was filed in Docket No. OA96–140–000.

The details of the service agreement is as follows:

(1) Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service dated as of July 26, 2000 by and between Tucson Electric Power Company and Arizona Public Service Company. Service commenced on July 26, 2000.

Comment date: September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Otter Tail Power Company

[Docket No. ER00–3411–000]

Take notice that on August 11, 2000, Otter Tail Power Company (Otter Tail), tendered for filing its tariff sheet that indicates Otter Tail's open access transmission tariff incorporates Mid-Continent Area Power Pool's (MAPP) revised Line Loading Relief procedures, as discussed in MAPP's, Docket Nos. ER99–2469–001, *et al.*

Comment date: September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Ameren Energy Generating Company

[Docket No. ER00–3412–000]

Take notice that on August 14, 2000, Ameren Energy Generating Company (AEG) tendered for filing requests for: (1) authorization to engage in the sale of electric energy and capacity at market-based rates, which would permit direct accounting of transactions on AEG's behalf consistent with approvals granted in prior Commission orders; (2) consistent with that authorization, approval of the amendment to a previously approved power supply agreement between AEG and Ameren Energy Marketing Company; and (3) certain blanket approvals and waivers of certain regulations promulgated under the FPA.

AEG seeks an effective date of August 15, 2000, for the market-based rate authorization and for the amended PSA, and an effective date of May 1, 2000, for the requested waivers of the Commission's informational and reporting requirements.

Copies of this filing were served on the affected state utility commissions.

Comment date: September 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Union Power Partners, L.P.

[Docket No. ER00–3417–000]

Take notice that on August 11, 2000, Union Power Partners, L.P. (Union Power), tendered for filing notice that effective August 12, 2000, FERC Electric Rate Schedule No. 1, effective May 2, 2000, and filed with the Federal Energy Regulatory Commission is to be canceled.

Comment date: September 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–21592 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2503–057]

Duke Power Company; Notice of Availability of Draft Environmental Assessment

August 18, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Energy Projects has reviewed the application filed March 24, 2000, requesting the Commission approve an amendment of license for the non-project use of project lands and waters—the leasing of 12 parcels of land totaling 11.34 acres for existing and proposed marina facilities within Keowee Key, an existing 1,600-acre residential community at Lake Keowee, and has prepared a Draft Environmental Assessment (Draft EA) for the proposed and alternative actions.

Copies of the Draft EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The document also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Any comments on the Draft EA should be filed within 30 days from the date of this notice and should be addressed to Dave Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix ''Keowee Key Marina Faiclities, Project No. 2503–057'' to the first page of your comments.

For further information, please contact Jim Haimes, staff environmental protection specialist, at (202) 219–2780 or at his E-mail address: james.haimes@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 00–21593 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions to Intervene, and Protests

August 18, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2232–411.

c. *Date Filed:* July 5, 2000.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* On Mountain Island Lake at StoneWater Subdivision, in Riverbend Township, Gaston County, North Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006. Phone: (704) 382–5778.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 219–3076, or e-mail address: brian.romanek@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* September 25, 2000.

All documents (original and eight copies) should be filed with David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (2232–411) on any comments or motions filed.

k. *Description of Proposal:* Duke Energy Corporation proposes to lease to StoneWater Bay Properties LLC, 2.654 acres of project land for the construction of 5 clustered boat docking facilities with a total of 94 boat slips. The boat slips would provide access to the reservoir for the off-water (or interior lot) residents of the StoneWater Subdivision. One of the slips would be equipped with a waste pump-out station and fuel dispensing station. No dredging is proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http:www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the

filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–21600 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

August 17, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11846–000.

c. *Date filed:* July 17, 2000.

d. *Applicant:* Ketchikan Electric Company.

e. *Name of Project:* Connell Lake Project.

f. *Location:* On Connell Lake and Ward Creek, in Ketchikan Gateway Borough, Alaska. The project would utilize federal lands within Tongass National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Robert S. Grimm, President, Ketchikan Electric Company, P.O. Box 3222, Port Townsend, WA 98368, (360) 385–1733, Ext 120.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) a 600-foot-long, 70-foot-high concrete gravity dam; (2) an impoundment with a surface area of 400 acres and storage capacity of 13,000 acre-feet, with normal water surface elevation of 254 feet msl; (3) an intake structure; (4) a 2.4-mile-long, 60-inch wood stave pipe; (5) a 0.3-mile-long concrete lined tunnel; (6) a 0.3-mile-long, 48-inch wood stave Pipe; (7) a 0.1-mile-long, 48-inch-diameter steel pipe; (8) a surge tank; (9) a 2,300-foot-long, 48-inch-diameter steel penstock; (10) a powerhouse containing one generating unit with an installed capacity of 1.7 MW; (11) a tailrace; (12) a 200-foot-long, 115 kV transmission line; and (13) appurtenant facilities.

The project would have an annual generation of 10,800 NWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTEVENE'', as applicable, and the Project Number of the particular

application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–21664 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Interstate Natural Gas Facility-Planning Seminar

August 18, 2000.

The Office of Energy Projects is initiating a series of public meetings around the country for the purposes of exploring and enhancing strategies for constructive public participation in the earliest stages of natural gas facility planning. The first meeting will be held in Albany, New York on Tuesday, September 26, 2000. We are inviting interstate natural gas companies; Federal, state and local agencies; landowners and other non-governmental organizations with an interest in developing a new way of doing business to join us in this effort. We will discuss the facility planning process, not the merits of any pending or planned pipelines projects.

Presentations will be made by the staff of the Commission's Office of Energy Projects, various Federal and state agencies, representatives from natural gas companies, and private landowners who have had relevant experiences. Join us as we explore how the natural gas industry has responded to the recent Commission regulations governing project notification for affected parties and learn about new strategies being employed within various gas companies to engage the public and agencies in participatory project design. There Will be substantial opportunity for the sharing of experiences and knowledge in interactive ''brainstorming'' sessions, so bring your ideas with you and prepare to share them.

The objectives of the meeting are:

- To explore ways of resolving issues during the applicant's pre-filing route planning, when the parties directly involved with and affected by natural gas facility siting and/or permitting can work together.
- To explore the best avenues for fostering settlements through creative issue resolution.
- To reduce the Commission's application processing time by encouraging the submission of filings with no or few contested issues.

The result will be the development of a toolbox of the best options to take to achieve faster approval by the Commission for projects required by the public convenience and necessity, fewer conditions, and a more direct path to commencement of construction.

The meeting in Albany, New York will be held at the Albany Marriott located at 189 Wolf Road, (518) 458–8444. The meeting is scheduled to start at 10:00 AM and finish at 4:00 PM. A preliminary agenda and directions to the hotel are enclosed. See attachment 2 regarding the selection of locations of future meetings.

If you plan to attend or have suggestions for the agenda, please respond by September 8, 2000 via facsimile to Pennie Louis-Partee at 202/219–2722, or you can email our team at: gasoutreach@ferc.fed.us. Please include in the response the names, addresses, and the telephone numbers of all attendees from your organization.

To help us enhance our panel discussions, please consider issues and/or questions you would like to have addressed at the meetings. If you have any questions, you may contact any of the staff listed below:

Richard Hoffmann 202/208–0066

Lauren O'Donnell 202/208–0325

Jeff Shenot 202/219–2178

Howard Wheeler 202/208–2299

J. Mark Robinson, Director,

Director, Division of Environmental & Engineering Review, Office of Energy Projects.

Appendix 1

Agenda

Interstate Natural Gas Facility Planning Seminar, Federal Energy Regulatory Commission, Albany Meeting

September 26, 2000—10:00 am to 4:00 pm

10:00—Introductions
Welcome: Mark Robinson, Director, Division of Environmental & Engineering Review, Office of Energy Projects, FERC Rich Hoffmann, Office of Energy Projects, FERC Maureen Helmer, Chairman, New York PSC
10:15—The Pipeline Planning/Approval Process
Where FERC fits in
Who's involved and when
10:45—Perspectives on Pipeline Planning
Panel #1—Initial Project Announcement
Industry Representative
Citizen Representative
Agency Representative
11:15—Break
11:25—Perspectives on Pipeline Planning
Panel #2—General Route Planning
Agency Representative
Industry Representative
Citizen Representative
11:55—Morning Summary and Lunchtime Homework Assignment
12:00—Lunch
1:30—Perspectives on Pipeline Planning
Panel #3—Detailed Route Planning
Citizen Representative
Agency Representative
Industry Representative
2:00—Brainstorming Session
Pre-filing BMPs from and Industry Perspective
- First announcement of the project
- How best to work with the communities

Pre-filing BMPs from an Agency Perspective
- How best to work with applicants
- How to get agency requests on the table and implemented
- How to coordinate with multiple agencies/jurisdictions
- How to work with agencies early in the process

Pre-filing BMPs from a Citizen Perspective
- How best to engage landowners
- How to get information on the need for a project
- How to describe workspace/right-of-way requirements

3:30—Closing summary

Directions to the Albany Marriott: 158 Wolf Rd, Albany, NY 12205; (518) 458–8444.

Taxis and rental cars are available at the Albany International Airport, or call the Marriott from the courtesy phone located near the baggage claim for complimentary shuttle service.

By car: From I–90 take I–87 North for three miles to exit 4 (Wolf Rd.—Albany Airport). At foot of exit, turn right at light onto Wolf Rd. and proceed to Marriott 1/2 mile on left.

Appendix 2

Future Meetings

Over the next year, we will hold other meetings at various locations around the country. Locations for the meetings will be selected based on this history of past, present and especially future pipeline projects where interstate natural gas markets are developing or expanding.

Areas we are considering for meetings include:

Tampa area or Tallahassee, Florida
Wooster, Ohio
Boston, Massachusetts/Portland, Maine area.
Springfield, Indiana area
Seattle/Puget Sound, Washington
Reno/Tahoe, Nevada or Salt Lake City, Utah area.

If you care to voice your opinion about these or other areas, please follow the instructions in the notice.

[FR Doc. 00–21605 Filed 8–23–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6857–2]

Microbial and Disinfection Byproducts Advisory Committee; Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under section 10(a)(2) of Public Law 920423, ''The Federal Advisory Committee Act,'' notice is hereby given of an extra meeting of the Microbial and Disinfection Byproducts Advisory Committee established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*). The meeting will be held on September 6 and is scheduled from 9:00 a.m. to 5:00 p.m. eastern time. The meeting will be held at RESOLVE, Inc., 1255 23rd Street, N.W., Suite 275, Washington, D.C. 20037. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is to review outstanding issues and reach a final Agreement in Principle. Statements from the public will be taken if time permits.

For more information, please contact Mariana Negro, Designated Federal Officer, Microbial and Disinfection Byproducts Advisory Committee, U.S. EPA, Office of Ground Water and Drinking Water, Mailcode 4607, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. The telephone number is 202–260–5746 or E-mail negro.mariana@epamail.epa.gov.

Dated: August 16, 2000.

Ephraim King,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 00–21669 Filed 8–23–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–958; FRL–6598–6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–958, must be received on or before September 25, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–958 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6379; e-mail address: tompkins.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311	Crop production Animal production Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–958. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–958 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''*opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–958. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated August 11, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

American Cyanamid Company

9F5092

EPA has received a pesticide petition 9F5092 from American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543-0400 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the herbicide (±)-2-4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1-H-imidazol-2-yl-5-methyl-3-pyridinecarboxylic acid (also known as imazapic), applied as either the free acid or the ammonium salt, and its metabolite (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1-H-imidazol-2-yl]-5-hydroxymethyl-3-pyridinecarboxylic acid, both free and conjugated, in or on the raw agricultural commodities grass forage at 35 parts per million (ppm), and grass hay at 15 ppm. Tolerances are also proposed for (±)-2-4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1-H-imidazol-2-yl-5-methyl-3-pyridinecarboxylic acid and its free hydroxymethyl metabolite alone in milk, meat of cattle, sheep, goats, and horses, fat of cattle, sheep, goats, and horses, meat by-products (except kidney) of cattle, sheep, goats, and horses at 0.1 ppm and kidney of cattle, sheep, goats, and horses at 2.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues of imazapic in grass is adequately understood. Based on results of a grass metabolism study conducted with a representative of this crop group, Bermuda grass, residues of concern for tolerance setting purposes in grass are parent imazapic and its hydroxymethyl metabolite, both free and glucose conjugated.

2. *Analytical method.* Practical analytical methods for detecting and measuring the residues of concern in grass and animal commodities are

submitted to EPA with this petition. The analytical methods for grass commodities, milk, meat, and meat by-products are based on capillary electrophoresis with limits of quantitation (LOQ) of 0.5 ppm for grass commodities, 0.01 ppm for milk, and 0.05 ppm for meat and meat by-products. Measurement of imazapic residues in milk fat and tissue fat is accomplished by high performance liquid chromatography/positive ion electro spray ionization tandem mass spectrometry (LC/MS). The validated LOQ of the method is 0.01 ppm for milk fat and 0.05 ppm for tissue fat. These independently validated methods are appropriate for the enforcement purposes of this petition.

3. *Magnitude of residues*. A total of 13 field trials was conducted with representative grasses for this crop group at the proposed use rate for imazapic on grass. The residue values based on the proposed label use pattern and reported from these field trials were all less than the proposed tolerances of 35 ppm for grass forage and 15 ppm for grass hay. No processing study is included with this petition as grasses from pasture and rangeland have no processed commodities according to the EPA residue chemistry test guidelines.

B. Toxicological Profile

1. *Acute toxicity*. Imazapic technical is considered to be nontoxic (toxicity category IV) to the rat by the oral route of exposure. In an acute oral toxicity study in rats, the LD_{50} value of imazapic technical was greater than 5,000 milligrams/kilograms body weight (mg/kg bwt) for males and females. The results from an acute dermal toxicity study in rabbits indicate that imazapic is slightly toxic (toxicity category III) to rabbits by the dermal route of exposure. The dermal LD_{50} value of imazapic technical was greater than 2,000 mg/kg bwt for both male and female rabbits. Imazapic technical is considered to be nontoxic (toxicity category IV) to the rat by the respiratory route of exposure. The 4-hour LC_{50} value was greater than 5.52 mg/L (analytical) for both males and females. Imazapic technical was shown to be non-irritating to rabbit skin (toxicity category IV) and minimally irritating to the rabbit eye (toxicity category III). Based on the results of a dermal sensitization study, imazapic technical is not considered a sensitizer in guinea pigs.

2. *Genotoxicty*. Imazapic technical was tested in a battery of four *in vitro* and one *in vivo* genotoxicity assays measuring several different endpoints of potential genotoxicity. Collective results from these studies indicate that imazapic does not pose a mutagenic or genotoxic risk.

3. *Reproductive and developmental toxicity*. The developmental toxicity study in Sprague Dawley rats conducted with imazapic technical showed no evidence of teratogenic effects in fetuses and no evidence of developmental toxicity. Thus, imazapic is neither a developmental toxicant nor a teratogen in the rat. In the rat developmental toxicity study with imazapic technical, the no observed adverse effect level (NOAEL) for maternal toxicity and developmental toxicity was 1,000 mg/kg bwt/day, the highest dose tested.

Results from a developmental toxicity study in New Zealand White rabbits with imazapic technical also indicated no evidence of teratogenicity or developmental toxicity. Thus, imazapic technical is neither a developmental toxicant nor a teratogen in the rabbit. In the rabbit developmental toxicity study, the NOAEL for maternal toxicity was 350 mg/kg bwt/day, based on decreased food consumption and body weight gain at 500 mg/kg bwt/day, the next highest dose tested. The NOAEL for developmental toxicity was determined by EPA to be 500 mg/kg bwt/day; the excessive mortality in dams at 700 mg/kg bwt/day (the highest dose tested) resulted in too few fetuses that were available for evaluation.

The results from the two-generation reproduction toxicity study in rats with imazapic technical support a NOAEL for parental toxicity of 20,000 ppm (or approximately 1,344 mg/kg bwt/day, calculated from food consumption data), the highest concentration tested. The NOAEL for growth and development of the offspring is also 20,000 ppm, or 1,344 mg/kg bwt/day. Results from the reproduction study and the developmental toxicity studies conducted with imazapic technical show no increased sensitivity to developing offspring as compared to parental animals, because the NOAELs for growth and development of offspring were equal to or greater than the NOAELs for parental toxicity.

4. *Subchronic toxicity*. A short-term (21-day) dermal toxicity study in rabbits was conducted with imazapic technical. No dermal irritation or abnormal clinical signs were observed at dose levels up to and including 1,000 mg/kg bwt/day (highest dose tested), supporting a NOAEL for dermal irritation and systemic toxicity of 1,000 mg/kg bwt/day. In a subchronic (13-week) dietary toxicity study in rats with imazapic technical, no signs of systemic toxicity were noted, supporting a NOAEL of 20,000 ppm (or approximately 1,625 mg/kg bwt/day, calculated from food consumption data), the highest concentration tested. The requirement for a subchronic dietary toxicity study in non-rodents is satisfied by the one-year dietary toxicity study in dogs.

5. *Chronic toxicity*. A one-year dietary toxicity study was conducted with imazapic technical in Beagle dogs at dietary concentrations of 0, 5,000, 20,000, and 40,000 ppm. In this study, the NOAEL for systemic toxicity was less than 5,000 ppm or approximately 158 mg/kg bwt/day (137 mg/kg bwt/day for males and 180 mg/kg bwt/day for females), calculated from food consumption data, based on a slight skeletal myopathy, characterized by degeneration/necrosis of single fibers (minimal severity) and lymphocyte/macrophage infiltration in skeletal muscle, in males and females, and slightly decreased serum creatinine in females at 5,000 ppm (lowest concentration tested).

The skeletal myopathy observed at 5,000 ppm was considered of minimal toxicological significance because the limited presence and the minimal severity of skeletal myopathy was evident in only a few fibers out of hundreds evaluated per section per animal. Further, these focal myopathies of minimal severity were not consistently diagnosed in all skeletal muscles sites examined per dog (i.e., vastus and abdominal muscles, diaphragm and esophagus). Moreover, no clinical observations indicative of muscle dysfunction were noted in any animal in the study. Finally, although the skeletal myopathy noted at 40,000 ppm (highest concentration tested) was associated with increases in creatine kinase, aspartate aminotransferase and lactate dehydrogenase, no statistically or biologically significant increases in these serum enzymes were noted during the study period for animals in the 5,000 ppm group. As such, the minimal myopathy diagnosed microscopically at 5,000 ppm was not considered to impair or adversely affect the functional capacity of the affected skeletal muscles.

In a 2-year chronic dietary oncogenicity and toxicity study in rats conducted with imazapic technical, the NOAEL for oncogenicity and chronic systemic toxicity was 20,000 ppm (approximately 1,133 mg/kg bwt/day, calculated from food consumption data), the highest concentration tested. An 18-month chronic dietary oncogenicity and toxicity study in mice with imazapic technical supports a NOAEL for oncogenicity and for chronic systemic toxicity of 7,000 ppm (or approximately 1,288 mg/kg bwt/day, calculated from

food consumption data), the highest concentration tested.

The EPA has classified imazapic as a group E carcinogen (evidence of non-carcinogenicity for humans) based on the absence of treatment-related tumors in acceptable carcinogenicity studies in both rats and mice.

6. *Animal metabolism*. The rat and goat metabolism studies indicate that the qualitative nature of the residues of imazapic in animals is adequately understood. In the rat metabolism study conducted with radio labeled AC 263222 (imazapic technical) no detectable radioactivity was excreted via expired air. In both the rat and goat metabolism studies, urinary excretion was the primary elimination route with 95% and 81.7% of the radioactivity, respectively, excreted in the urine. The major component in the urine from both studies was the unchanged parent compound.

There was no significant bioaccumulation of radioactivity in the tissues from the rat metabolism study. In the goat metabolism study, blood and tissue samples taken following sacrifice at approximately 23 hours after the last dose contained less than 0.01% of the administered radioactivity, and the entire milk sample contained less than 0.03% of the administered radioactivity. As with the residues in other samples from the rat and goat metabolism studies, the major residue in the goat tissue and milk samples was parent compound. A hen metabolism study is not required, because grasses from pasture or rangelands are not used as significant feedstuff for poultry according to the EPA residue chemistry test guidelines.

7. *Metabolite toxicology*. Metabolism studies in grass and peanuts indicate that the only significant metabolite is the hydroxymethyl metabolite of imazapic, both free and glucose conjugated. The hydroxymethyl metabolite has also been identified in minor quantities in the rat metabolism study and in a previously submitted goat metabolism study. No additional toxicologically significant metabolites were detected in any of the plant or animal metabolism studies.

8. *Endocrine disruption*. Collective organ weight data and histopathological findings from the two-generation rat reproductive study, as well as from the subchronic and chronic toxicity studies in three different animal species, demonstrate no apparent estrogenic effects or treatment-related effects of imazapic on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*. The potential dietary exposure to imazapic has been calculated from the proposed tolerances for use on grasses and from the previously established tolerance for peanuts. These very conservative chronic dietary exposure estimates used the tolerance value for peanuts and the proposed tolerance values for meat and milk. In addition, these estimates assume that 100% of the peanut crop and all meat and milk contain imazapic residues.

i. *Food*. Using the assumptions discussed above, the theoretical maximum residue concentration (TMRC) values of imazapic were calculated for the U.S. general population and subgroups. Based on the peanut tolerance and the proposed tolerances for meat and milk, the TMRC values for each group are 0.000778 mg/kg bwt/day for the general U.S. population; 0.001257 mg/kg bwt/day for all infants; 0.001524 mg/kg bwt/day for non-nursing infants; 0.002878 mg/kg bwt/day for children 1 to 6 years of age, and 0.001430 mg/kg bwt/day for children 7 to 12 years of age. Potential exposure to residues of imazapic in food will be restricted to intake of peanuts, peanut butter, peanut oil, meat, meat byproducts, and milk.

ii. *Drinking water*. As a screening-level assessment for aggregate exposure, the U.S. EPA evaluates a drinking water level of comparison (DWLOC), which is the maximum concentration of a chemical in drinking water that would be acceptable in light of total aggregate exposure to that chemical. Based on the chronic reference dose (RfD) of 0.5 mg/kg bwt/day and the EPA's default factors for body weight and drinking water consumption, the DWLOCs have been calculated to assess the potential dietary exposure from residues of imazapic in water. For the adult population, the chronic DWLOC was 17,473 and for children the DWLOC was estimated to be 4,971 parts per billion (ppb).

Chronic drinking water exposure analyses were calculated using EPA models for Screening Concentration in Groundwater (SCI-GROW) for ground water and Generic Expected Environmental Concentration (GENEEC) for surface water. The calculated peak GENEEC value is 5.58 ppb and the SCI-GROW value is 0.56 ppb. For the U.S. adult population, the estimated exposures of imazapic residues in surface water and ground water are approximately 0.03% and 0.003%, respectively, of the DWLOC. The estimated exposures of children to imazapic residues in surface water and ground water are approximately 0.1% and 0.01%, respectively, of the DWLOC. Therefore, the exposures to drinking water from imazapic use are negligible.

2. *Non-dietary exposure*. Imazapic products are not currently registered or requested to be registered for residential or urban use; therefore, the estimate of residential exposure is not relevant to this tolerance petition.

D. Cumulative Effects

Imazapic is a member of the imidazolinone class of herbicides. Other compounds of this class are registered for use in the U.S. However, the herbicidal activity of the imidazolinones is due to the inhibition of acetohydroxy acid synthase (AHAS), an enzyme only found in plants. AHAS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack AHAS and this biosynthetic pathway. This lack of AHAS contributes to the low toxicity of the imidazolinone compounds in animals. We are aware of no information to indicate or suggest that imazapic has any toxic effects on mammals that would be cumulative with those of any other chemical. Therefore, for the purposes of this tolerance petition no assumption has been made with regard to cumulative exposure with other compounds having a common mode of action.

E. Safety Determination

1. *U.S. population*. The RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Results from the 1–year chronic dietary toxicity study in dogs supports the lowest observed effect level (LOAEL) of 5,000 ppm, equivalent to approximately 137 mg/kg bwt/day for males. The EPA applied an uncertainty or safety factor of 300 to the LOAEL based on a safety factor of 100 to account for interspecies extrapolation and intraspecies variability, and an additional factor of 3 to account for the lack of a NOAEL in the chronic dog study. Applying a safety factor of 300 to this LOAEL of 137 mg/kg bwt/day results in the RfD of 0.50 mg/kg bwt/day. The chronic dietary exposure of 0.00078 mg/kg bwt/day for the general U.S. population will utilize only 0.2% of the RfD of 0.5 mg/kg bwt/day. EPA generally has no concern for exposures below 100% of the RfD. Due to the low toxicity of imazapic, an acute exposure dietary risk assessment is not warranted. The complete and reliable toxicity data base, the low toxicity of the molecule, and the conservative chronic dietary exposure assumptions support the

conclusion that there is a ''reasonable certainty of no harm'' from the proposed use of imazapic on grasses and the currently registered crop, peanuts.

2. *Infants and children.* The conservative dietary exposure estimates previously presented will utilize 0.3% of the RfD for all infants, for the non-nursing infant group, and for children ages 7 to 12. The chronic dietary exposures for children 1 to 6 years of age, the most highly exposed subgroup, will utilize only 0.6% of the RfD. Results from the two-generation reproduction study in rats and the developmental toxicity studies in rabbits and rats indicate no increased sensitivity to developing offspring when compared to parental toxicity. These results also indicate that imazapic is neither a developmental toxicant nor a teratogen in either the rat or rabbit. Therefore, an additional safety factor is not warranted, and the RfD of 0.5 mg/kg bwt/day, which utilizes a 300-fold safety factor is appropriate to ensure a reasonable certainty of no harm to infants and children.

F. International Tolerances

There are no Codex maximum residue levels established or proposed for residues of imazapic from use on grasses.

[FR Doc. 00–21673 Filed 8–23–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–964; FRL–6739–1]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–964, must be received on or before September 25, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–964 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Daniel C. Kenny, Fungicides Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7546; e-mail address: kenny.dan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–964. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–964 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *''opp-docket@epa.gov,''* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control

number PF–964. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 15, 2000.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Rohm and Haas Company

PP 9F5058

EPA has received a pesticide petition (PP 9F5058) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of zoxamide (RH-117281 Technical) benzamide-3,5-dichloro-*N*-(3-chloro-1-ethyl-1-methyl-2-oxopropyl)-4-methyl in or on the raw agricultural commodity tomatoes and cucurbits at 2 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of zoxamide in plants (tomatoes and cucurbits) is adequately understood for the purposes of these tolerances. There were no significant metabolites other than the parent compound in either crop. Residues were surface residues of parent zoxamide and minor amounts of hydrolysis or photolysis degradates and a fairly large number of polar materials, each less than 2% of the total radioactive residue (TRR). No metabolites were present in excess of 5% of the total dosage. This is the same pattern seen in grapes, filed earlier.

2. *Analytical method.* Tolerance enforcement methods using gas chromatography/electron capture detection (GC/ECD) with confirmation by gas chromatography/mass selective detection (GC/MSD), have been developed for zoxamide in cucurbits (cucumber, cantaloupe, zucchini), tomatoes, tomato paste, and tomato puree. The limit of quantitation is 0.01 ppm for all matrices. Average recoveries are 89.3 ± 9.71% for cucurbits, 93.8 ± 10.1% for tomatoes, 94.1 ± 9.3% for tomato paste, and 90.7 ± 13.7% for tomato puree, over the range of fortifications. The methods involve extraction with solvent, filtration, liquid-liquid partition, and final purification of the residues using solid phase column chromatography. The methods have been radiovalidated and an independent laboratory validation has been completed.

3. *Magnitude of residues—Cucurbits.* Seventeen cucurbit field residue trials were conducted in nine states. There were 6 trials for cucumbers, 6 trials for cantaloupe, and 5 trials for zucchini. These trials will cover a cucurbit crop group tolerance. All studies were done with eight applications of 0.2 lb. active ingredient/acre (ai/acre) (0.224 kg ai/ha) for a total seasonal use rate of 1.6 lb. ai/acre (1.8 kg ai/ha). In all trials, fruit was harvested on the day of the final application (0 day Pre-harvest interval (PHI)). This is the proposed maximum seasonal use rate and proposed PHI. In three trials, residue decline samples were taken over 6 or 7 days.

Samples were analyzed for RH-117281. The average residue over all trials was 0.11 ppm (0.245 ppm for cantaloupe, 0.053 ppm for cucumbers and 0.115 ppm for zucchini). This single highest residue in any trial was 0.73 ppm. Residue declined from 0.12 to 0.04 ppm over 7 days in one trial and remained fairly constant at about 0.04 ppm in the other two residue decline trials.

These data support the establishment of a permanent tolerance of 2.0 ppm on cucurbits.

Tomatoes. Sixteen field residue trials, including 2 decline experiments, 2 bridging trials, and one processing study were conducted in six states. The trials each consisted of eight applications of the 80 W formulation of RH-117281 at

0.02 lb. ai/acre (0.224 kg ai/ha), for a total seasonal rate of 1.6 lb ai/acre (1.8 kg ai/ha). The bridging trials had a separate treated plot which received 10 applications of the 2F formulation at the same rate. Three of the trials, including the processing study trial, had 1 to 3 additional applications in order to ensure that the commercial quality fruit could be harvested at the appropriate preharvest interval. In all of the trials, fruit was harvested 5 days after the final application. In two of the trials, samples were taken at 0, 3, 5, and 7 days after the final application to determine residue decline.

Samples were analyzed for residues of RH-117281. The average residue over all trials was 0.21 ppm. This single highest residue in any trial was 1.18 ppm.

Tomato puree and tomato paste were generated from one residue trial. Washing removed about 80% of the residue from the tomato RAC. There was no concentration of residue in either tomato puree or tomato paste.

These data support the establishment of a permanent tolerance of 2.0 ppm on tomatoes and tomato processed fractions.

B. Toxicological Profile

1. *Acute toxicity*. Zoxamide has low acute toxicity. Zoxamide was practically non-toxic by ingestion of a singe oral dose in rats and mice (LD_{50} >5,000 milligrams/kilograms (mg/kg), practically non-toxic by dermal application to rats (LD_{50} > 2,000 mg/kg), and practically non-toxic to rats after a 4-hr inhalation exposure with an LC_{50} value of > 5.3 mg/L (highest attainable concentration), is not considered to be a primary eye irritant or a skin irritant and is not a dermal sensitizer. The technical material was nonirritating to skin after single applications and moderately irritating to eyes. Zoxamide produced delayed contact hypersensitivity in the guinea pig at concentrations of 2,500 ppm and higher. An acute neurotoxicity study in rats did not produce any neurotoxic or neuropathologic effects with a NOAEL > 2,000 mg/kg.

2. *Genotoxicity*. Zoxamide was nonmutagenic in a standard battery of tests. In *in vitro* assays, zoxamide showed no evidence of mutagenic activity in an Ames and CHO/HGPRT assays for gene mutation, and no evidence of structural chromosomal aberrations in the CHO *in vitro* cytogenetic study. As predicted by its antibulin mode of action, mitotic accumulation and polyploidy were noted at cytotoxic doses in the *in vitro* chromosomal assay. However, there was no evidence of structural or numerical chromosomal aberrations when zoxamide was tested *in vivo* in the mouse micronucleus test.

3. *Reproductive and developmental toxicity*— i. No observable adverse effects levels (NOAELs) for developmental and maternal toxicity to zoxamide were established at 1,000 mg/kg/day highest dose tested (HDT) in both the rat and rabbit. No signs of developmental toxicity were exhibited.

ii. In a 2-generation reproduction study in the rat, zoxamide had a no adverse effect on reproductive performance or pup development at doses up to an exceeding 1,471 mg/kg/day, the limit dose tested. This NOAEL was 20-fold higher than the NOAEL for adult toxicity of 71 mg/kg/day. A delay in periweaning weight gain and associated spleen effects in the F1 and F2a litters were shown in the F2b litters to be a secondary effect related to feed refusal due to palatability of the treated diets, and not to a systemic toxic effect. The consequences of feed refusal due to palatability do not constitute an adverse effect relevant to human health risk assessment.

4. *Subchronic toxicity*. The NOAEL in a 90-day rat subchronic feeding and neurotoxicity study was 1,500 mg/kg/day in males and 1,622 mg/kg/day in females HDT. Zoxamide did not produce neurotoxic or neuropathologic effects.

A 90-day feeding study with mice, the NOAEL was 436 mg/kg/day in males and 574 mg/kg/day in females based on a slight decrease in weight gain among the females only at the LOAEL of 1,666 mg/kg/day.

A 90-day dog feed study gave a NOAEL of 55 mg/kg in males and 62 mg/kg/day in females based on increased liver weights without a corresponding clinical or histopathologic change in females only at 322 mg/kg/day.

No signs of systemic toxicity were observed when zoxamide was administered dermally to rats for 28 days at a limit dose of 1,000 mg/kg/day. This occurred despite skin irritation at all doses tested (150, 400, and 1,000 mg/kg/day). Similarly, *in vivo* dermal absorption was shown to be low regardless of concentration or formulation type (i.e., <1–6% of the administered dose was systemically absorbed after 24 hrs.)

5. *Chronic toxicity*. In a combined rat chronic/oncogenicity study, the NOAEL for chronic toxicity was 51 mg/kg/day in males an 65 mg/kg/day in females based on an equivocal increase in relative liver weight at a LOAEL of 328 mg/kg/day in females at the interim sacrifice only. The NOAEL was considered to be 1,058 mg/kg/day in males and 1331 mg/kg/day in females (HDT, limit dose). No carcinogenicity was observed.

An 18-month mouse carcinogenicity study showed no signs of carcinogenicity or of any other compound-related effect at dosage levels up to 1021 mg/kg/day in males and 1,289 mg/kg/day in females (HDT, limit dose).

The NOAEL in a 1-year feeding study in dogs was 255 mg/kg/day in males and 48 mg/kg/day in females based on minimal effects on body weight and body weight gain and increased liver weights in females only at a LOAEL of 278 mg/kg/day.

6. *Animal metabolism*. In pharmacokinetic and metabolism studies in the rat, zoxamide was rapidly and extensively absorbed, metabolized and excreted following oral exposure. A total of approximately 60% of the administered dose was systemically absorbed. Plasma levels peaked within 8 hours of dosing, and declined with a half-life of 12–14 hours, consistent with the nearly complete excretion within 48 hours. No evidence of accumulation of the parent compound or its metabolites was observed. The predominant route of excretion was hepatobiliary. Metabolism was found to occur through multiple pathways involving primary hydrolysis, glutathione-mediated reactions, and reductive dehalogenation; secondary oxidation on both the aromatic methyl and the aliphatic side-chain; and terminal glucuronic acid and ammo acid conjugation. Altogether, 32 separate metabolites were identified; no single metabolite other than parent zoxamide accounted for more than 10% of the administered dose. The rapid metabolism and excretion of zoxamide is a major factor explaining the compound's overall remarkably low toxicity profile in animals.

7. *Metabolite toxicology*. There were no significant metabolites other than the parent zoxamide in tomatoes or cucurbits.

8. *Endocrine disruption*. Based on structure-activity and mode of action information as well as the lack of developmental and reproductive toxicity, zoxamide is unlikely to exhibit endocrine activity. There was no evidence of a functional or histopathologic change in the male or female reproductive tract, and no indicators of an endocrine effect of any kind below limit doses in mammalian subchronic or chronic studies or in mammalian and avian reproduction studies. A slight thyroid effect at the limit dose (994–1139 mg/kg/day) in the subchronic and chronic dog studies was secondary to liver hypertrophy and

enlargement at that dose. Collectively, the weight of evidence provides no indication of an endocrine effect of zoxamide.

C. Aggregate Exposure

1. *Dietary exposure*— i. *Food*. Tolerances are proposed in the present or preceding summaries for the residues of zoxamide in or on tomatoes (2 ppm), cucurbits (2 ppm), potatoes (0.1 ppm), grapes (5 ppm), and raisins (15 ppm). There is no reasonable expectation of transfer of residues of zoxamide into meat or milk from potatoes. There are no tomato, cucurbit or grape feed commodities fed to livestock, and none of these commodities is fed to poultry. There are no other established or proposed U.S. tolerances for zoxamide, and no currently registered uses in the United States. Risk assessments were conducted by Rohm and Haas to assess dietary exposures and risks from zoxamide as follows:

Acute exposure and risk. No acute endpoint was identified for zoxamide, and no acute risk assessment is required.

ii. *Chronic exposure and risk*. For chronic dietary risk assessment, the proposed tolerance values, as well as anticipated (average) residues and processing factors were used and the assumption that 100% of all tomatoes, cucurbits, potatoes, and grapes will contain residues of zoxamide at the tolerance or anticipated residue levels. Potential chronic exposures were estimated using USDA food consumption data from the 1989-1992 survey. With the proposed tolerances and anticipated residue levels for zoxamide, the percentage of the 0.5 mg/kg/day RfD utilized is as follows:

	Tolerance Levels Total % RfD	Anticipated Residues Total % RfD
U.S. Population—48 States	1.3	0.1
Nursing Infants < 1 year old	1.3	0.2
Non-Nursing Infants < 1 year old	2.4	0.1
Children 1-6 years old	3.5	0.2
Children 7-12 years old	1.8	0.1

The chronic dietary risks from these uses do not exceed EPA's level of concern.

iii. *Drinking water*. No direct information is available on potential for exposure to zoxamide from drinking water. However, exposure from drinking water is unlikely to occur as a result of the uses on treated crops. Submitted environmental fate studies indicate that zoxamide dissipates rapidly from the environment under all conditions tested, and it is not mobile and poses no threat to groundwater. Furthermore, its environmental metabolites are very short-lived and also have no potential to leach.

There is no established Maximum Concentration Level (MCL) for residues of zoxamide in drinking water, and no drinking water health advisory levels have been established. There is no entry for zoxamide in the ''Pesticides in Groundwater Database'' (EPA 734–122–92–001, September 1992).

2. *Chronic exposure and risk*. Nevertheless, to assess an upper bound on the potential for exposure from drinking water, chronic exposure to zoxamide in drinking water was estimated using the generic expected environmental concentration (GENEEC) V1.2 model, as directed in OPP's Interim Approach for Addressing Drinking Water Exposure. GENEEC is a highly conservative model used to estimate residue concentrations in surface water. As indicated in EPA's drinking water exposure guidance, a very small percentage of people in the U.S. would derive their drinking water from such sources. GENEEC (56 Day average) water exposure values utilize substantially less than 1% of the RfD for adults and children.

3. *Non-dietary exposure*. Zoxamide is not currently registered for any indoor or outdoor residential or structural uses and no application is pending; therefore, no non-dietary non-occupational exposure is anticipated.

4. *Aggregate exposure and risk*. The anticipated aggregate exposure from food and drinking water combined is <4% of the RfD, and there is no expectation of other non-occupational exposure. Thus, aggregate exposure to zoxamide does not exceed EPA's level of concern.

D. Cumulative Effects

At this time, no data are available to determine whether zoxamide has a common mechanism of toxicity with other substances. Thus, it is not appropriate to include this fungicide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, zoxamide does not appear to produce a toxic metabolite produced by other substances. In addition, the toxicity studies submitted to support this petition indicate that zoxamide has only limited toxic potential. No toxic endpoints of potential concern were identified. For the purposes of this tolerance action, therefore, zoxamide [benzamide-3,5-dichloro-*N*-(3-chloro-1-ethyl-1-methyl-2-oxopropyl)-4-methyl] is assumed not to have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*— i. *Acute exposure and risk*. Since no acute endpoint was identified for zoxamide, no acute risk assessment is required.

ii. *Chronic exposure and risk*. Using the conservative exposure assumptions described above and taking into account the completeness and reliability of the toxicity data, the percentage of the RfD that will be utilized by dietary (food only) exposure to residues of zoxamide from the proposed tolerances is 1.3% (tolerance levels) and 0.1% (anticipated residues) for the U.S. population. Aggregate exposure (food and water) are expected to be 1.37% RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Rohm and Haas concludes that there is a reasonable certainty that no harm will result from aggregate exposure to zoxamide residues to the U.S. population.

2. *Infants and children*— i. *In general*. The potential for additional sensitivity of infants and children to residues of zoxamide is assessed using data from developmental toxicity studies in the rat and rabbit and 2-generation reproduction studies in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

ii. *Developmental toxicity studies—Rats*. In a developmental toxicity study in rats, the maternal NOAEL was 1,000 mg/kg/day (highest dose tested, HDT), and the developmental (pup) NOAEL was 1,000 mg/kg/day HDT.

iii. *Rabbits*. In a developmental toxicity study in rats, the maternal NOAEL was 1,000 mg/kg/day HDT, and the developmental (pup) NOAEL was 1,000 mg/kg/day HDT.

iv. *Reproductive toxicity study—Rats*. In a multigeneration reproductive toxicity study in rats, the parental (systemic) NOAEL was 71 mg/kg/day, based on an equivocal liver effect at the LOAEL of 360 mg/kg/day. The NOAEL for reproductive and developmental

effects was 1,471 mg/kg/day HDT. No adverse reproductive or developmental effects were observed.

3. *Prenatal and postnatal sensitivity*. No developmental or reproductive effects were demonstrated for zoxamide as a result of systemic exposures at up to limit doses of 1,000 and 1,471 mg/kg/day. Additionally, these NOAELs are greater than 20-fold higher than the NOAELs of 48-51 mg/kg/day from the dog and rat chronic studies which are the basis of the RfD. These developmental and reproductive studies indicate that developing and maturing animals are not more sensitive either pre or postnatally than other age groups to zoxamide; i.e., zoxamide does not exhibit additional prenatal or postnatal sensitivity. Thus, reliable data indicate that an additional Food Quality Protection Act uncertainty factor is not necessary to insure an adequate margin of safety for protection of infants and children.

4. *Acute exposure and risk*. No acute endpoint was identified for zoxamide, and therefore no acute risk assessment is required.

5. *Chronic exposure and risk*. Using the conservative exposure assumptions described above and taking into account the completeness and reliability of the toxicity data, the percentage of the RfD that will be utilized by dietary (food only) exposure to residues of zoxamide from the proposed tolerances is 2.4% (tolerance levels) and 0.2% (anticipated residues) for children, 1-6 years old, the most highly exposed subgroups. Aggregate exposure (food and water) are expected to be <4% RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Rohm and Haas concludes that there is a reasonable certainty that no harm will result from aggregate exposure to zoxamide residues to the U.S. population.

F. International Tolerances

There are currently no CODEX, Canadian or Mexican maximum residue levels established for zoxamide in tomatoes, processed tomato products, or cucurbits. Thus, no harmonization issues are required to be resolved for this action.

[FR Doc. 00–21674 Filed 8–23–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6857–4]

John P. Saad Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlements.

SUMMARY: The United States Environmental Protection Agency (EPA) proposed to enter into three (2) cost recovery settlements, one (1) pursuant to section 122(g) and one(1) pursuant to section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(g). These administrative settlements will resolve the settling party's liability for past response costs incurred by EPA at the John P. Saad Superfund Site located in Nashville, Tennessee. EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate that the proposed settlements are inappropriate, improper, or inadequate.

Copies of the proposed settlements are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of publication.

Dated: June 22, 2000.

Anita Davis,

Acting Chief, Program Services Branch, Waste Management Division.

[FR Doc. 00–21670 Filed 8–23–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6857–3]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act; In the Matter of Lakeland Disposal Service, Inc., Claypool, Indiana

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Notice; request for public comment.

SUMMARY: Notice of *De Minimis* Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), U.S. EPA gives notice of a proposed administrative settlement concerning the remedial action at the Lakeland Disposal Service, Inc., Superfund Site, Claypool, County of Kosciusko, Indiana (the Site). The proposed agreement will resolve issues concerning one individual *De Minimis* landowner at the Site. U.S. EPA has previously submitted the proposed agreement to the U.S. Department of Justice for review and has received its approval for the proposed agreement via letter dated March 7, 2000.

DATES: Comments must be provided on or before September 25, 2000.

ADDRESSES: Barbara Wester (C–14J), Office of Regional Counsel, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60605–3590. Include the following name of the matter in the comment: In the Matter of Lakeland Disposal Service, Inc., Claypool, Indiana, U.S. EPA Docket No. V–W–99–C–561.

FOR FURTHER INFORMATION CONTACT: Barbara Wester (C–14J), Office of Regional Counsel, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604–3590.

SUPPLEMENTARY INFORMATION: Homer Dove owns approximately five (5) acres of property located adjacent to and within the boundaries of the Site and did not himself contribute any wastes to the Site. The Record of Decision (ROD) for the Site, issued on September 28, 1993, contemplated that deed restrictions and institutional controls would be an important part of the remedy. The Settlement provides: That Dana Corporation; Eaton Corporation; General Motors Corporation; United Technologies Automotive, Inc.; and Warsaw Black Oxide, Inc. (collectively, the UAO Group) will compensate Mr. Dove for the loss of use of his property; that Mr. Dove will establish the contractual access provisions and deed restrictions necessary to effect the on-going remediation of the Site proscribed by the ROD; and that Mr. Dove will convert these contractual promises to the form of an environmental easement, if U.S. EPA request that he do so. U.S. EPA will receive written comments relating to this settlement agreement for a period of thirty (30) days from the date of publication of this notice. Under CERCLA section 122(i)(3), U.S. EPA will consider any comments filed during this public comment period in ''determining whether or not to consent to the

proposed settlement and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.''

Copies of the proposed administrative settlement agreement and of additional background information relating to the settlement are available for review. These may be obtained in person at the Superfund Division's public records center, 7th Floor, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604–3590, or by mail from Barbara Wester (C–14J), Office of Regional Counsel, U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601–9675.

Margaret M. Guerriero,

Acting Director, Superfund Division, Region 5.

[FR Doc. 00–21668 Filed 8–23–00; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

August 14, 2000

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 25, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0683.

Title: Direct Broadcast Satellite Service—47 CFR Part 100.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 8.

Estimated Time per Response: 400 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 3,200 hours.

Total Annual Cost: $5,800.

Needs and Uses: The information requested under CFR part 100 of the FCC's rules is used by the Commission to determine whether applicants are legally, technically, and financially qualified to hold a DBS authorization. Without such information, the Commission could not make determinations for authorization to provide service to successful applicants and would not, therefore, be able to fulfill its statutory obligations in accordance with the Communications Act of 1934, as amended.

OMB Control Number: 3060–0765.

Title: Revision of part 22 and part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Further Notice of Proposed Rulemaking.

Form Number: FCC 601.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit Institutions; Federal government; and State, local, or Tribal Government.

Number of Respondents: 3,000.

Estimated Time Per Response: 1.25 hours (avg.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 3,750 hours.

Total Annual Costs: $750,000.

Needs and Uses: This proceeding will further establish a regulatory scheme for the common carrier paging (CCP) and private carrier paging (PCP) services which will promote efficient licensing and competition in the commercial mobile radio marketplace. The Commission uses this information to determine if the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. Without such information, the Commission could not determine whether the licensee is operating in compliance with the Commission's rules.

OMB Control Number: 3060–0865.

Title: Wireless Telecommunications Bureau Universal Licensing System Recordkeeping and Third Party Disclosure.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit Institutions; and State, local, or Tribal Governments.

Number of Respondents: 62,791.

Estimated Time Per Response: 1.10 hours (avg.).

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 77,164 hours.

Total Annual Costs: None.

Needs and Uses: The Universal Licensing System (ULS) establishes a streamlined set of rules that minimizes filing requirements, eliminates redundant or unnecessary submission requirements, and assures the on-going collection of reliable licensing and ownership data. The recordkeeping and third party disclosure requirements contained in this collection are the result of the elimination of a number of filing requirements. The ULS forms contain a number of certifications; however, applicants must maintain records to document compliance with the requirements for which they provide certifications. In some instances, coordination with third parties are required.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–21623 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Submitted to OMB for Review and Approval

August 17, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 25, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0551.

Title: Sections 76.1002 and 76.1004, Specific Unfair Practices Prohibited.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 52.

Estimate Time Per Response: 1 to 25 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 676 hours.

Total Annual Costs: $97,500.

Needs and Uses: The Commission staff will use this information to determine on a case-by-case basis whether particular exclusive contracts for cable television programming comply with the statutory public interest standard of section 19 of the 1992 Cable Television Consumer Protection and Competition Act and section 628 of the Communications Act of 1934, as amended. Section 301(j) of the 1996 Telecommunications Act amends the restrictions in section 628 to include common carriers and their affiliates that provide video programming.

OMB Control Number: 3060–0920.

Title: Application for Construction Permit for a Low Power FM Broadcast Station.

Form Number: FCC 318.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; and State, local, or tribal governments.

Number of Respondents: 2,500.

Estimate Time Per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 3,750 hours.

Total Annual Costs: None.

Needs and Uses: FCC Form 318 is required to apply for a construction permit for a new LPFM station or to make changes in the existing facilities of such a station. The Commission uses these data to determine whether an applicant meets the basic statutory and regulatory requirements to become a FCC licensee and to ensure that the public interest would be served by grant of the application.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–21624 Filed 8–23–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 18, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Countrywide Credit Industries, Inc., Calabasas. California, and its subsidiaries, Countrywide Financial Holding Company, Inc., Calabasas, California, and Effinity Financial Corporation, Alexandria, Virginia; to become bank holding companies by acquiring 100 percent of the voting shares of Treasury Bank, Ltd., Washington, D.C.

B. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. RCK, Inc., Jacksonville, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of CenterBank of Jacksonville, N.A. (in organization), Jacksonville, Florida.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Mercantile Bancorp, Inc., Quincy, Illinois; to acquire 20 percent of the voting shares of New Frontier Bancshares, Inc., St. Charles, Missouri,

and thereby indirectly acquire voting shares of New Frontier Bank (a de novo bank), St. Charles, Missouri.

2. New Frontier Bancshares, Inc., St. Charles, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of New Frontier Bank (a de novo bank), St. Charles, Missouri.

D. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. CommunityOne Bancshares, Inc., Plymouth, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Plymouth (a de novo bank), Plymouth, Minnesota.

E. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. BOU Bancorp, Inc., Ogden, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Utah, Ogden, Utah.

Board of Governors of the Federal Reserve System, August 18, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–21591 Filed 8–23–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–61–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

National Telephone Survey of Chronic Fatigue Syndrome and Clinical Evaluation Study—New—National Center for Infectious Disease (NCID). In 1997, OMB approved the information collection ''Chronic Fatigue Syndrome Surveillance and Related Studies, Prevalence and Incidence of Fatiguing Illness in Sedgwick County, Kansas'' under OMB Number 0920–0401. Data from this cross-sectional, random-digit-dial survey of prolonged fatiguing illness in Sedgwick County (Wichita), Kansas concluded that prolonged fatigue affects over 6 percent of the population, the prevalence of chronic fatigue syndrome (CFS) was 0.24 percent, and that CFS prevalence was highest in white females (0.36 percent).

The proposed study replicates the Sedgwick County study using identical methodology and data collection instruments. The study begins with a random-digit-dial telephone survey to identify fatigued and non-fatigued individuals followed by a detailed telephone interview to obtain additional data on participants' health status. Study objectives are to refine estimates of the magnitude of fatiguing illness and CFS in the United States, with special consideration of under-served populations (children and racial/ethnic minorities), and to determine if the occurrence of fatiguing illness exhibits metropolitan, urban, and rural differences. Prevalence estimates from this proposed cross-sectional study of the U.S. population will be compared to those obtained for Sedgwick County to determine if the Sedgwick County findings can be generalized to the U.S. The estimated total burden hours is 11,835.

Pilot Study and Telephone Component

Form name	No. of respondents	No. of responses/ respondent	Average burden/response (in hrs.)
Screening questionnaire:			
Pilot	563	1	5/60
Telephone	66,000	1	5/60
Extended questionnaire			
Pilot	100	1	25/60
Telephone	12,610	1	25/60

Clinic Component

Form name	No. of respondents	No. of responses/ respondent	Average burden/response (in hrs.)
Medical history questionnaire:			
Adult	600	1	25/60
Medical history questionnaire:			
Adolescent	15	1	30/60
Medical history questionnaire:			
Parent of adolescent	15	1	30/60
Sleep disorders questionnaire:			
Adults	600	1	7/60
Fatigue questionnaire:			
Adults and adolescents	615	1	15/60
Fatigue questionnaire:			
Parent of adolescent	15	1	15/60
SF–36 questionnaire:			
Adult, adolescent, parent of adolescents	630	1	11/60
Diagnostic interview schedule:			
Adult	600	1	45/60

Form name	No. of respondents	No. of responses/ respondent	Average burden/response (in hrs.)
Diagnostic interview schedule: Parent version	15	1	45/60
Diagnostic interview schedule: Child version	15	1	45/60

Dated: August 18, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–21608 Filed 8–23–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–62–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

National Survey of Family Growth, Cycle 6 Pretest (0920–0314)—Reinstatement—The National Center for Health Statistics (NCHS)—The National Survey of Family Growth (NSFG) has been conducted periodically by the National Center for Health Statistics (NCHS) since 1973—in 1973, 1976, 1982, 1988, and 1995. The purpose of the NSFG is to provide national statistics on family formation, growth, and dissolution (Section 306 of the Public Health Service Act). This includes data on factors affecting birth, pregnancy rates, and family formation—such as sexual activity, marriage, divorce, cohabitation, contraception, infertility, miscarriage, and wanted and unwanted births. The social, economic (e.g., education, income, and work), and health factors (such as low birth weight and receipt of health care) associated with them are also collected. The target universe of the NSFG has always been women in the civilian non-institutional population of reproductive age (15–44). The population in this pretest includes an independent sample of men (15–49), in order to collect data related to male fertility, marriage and divorce, and parenting, as well as data to measure the risk of HIV (the virus that causes AIDS) and other sexually transmitted diseases.

NSFG data are used by NCHS, the National Institute for Child Health and Human Development (NICHD), the Office of Population Affairs, the CDC HIV Prevention Program, the Office of the Assistant Secretary for Planning and Evaluation (OASPE/DHHS), and the Children's Bureau. Specific uses include the Healthy People 2000 and 2010 objectives, reporting to Congress required by the 1996 Personal Responsibility and Work Opportunity Act (Section 905 and 906), the DHHS Fatherhood Initiative, and the National Campaign to Prevent Teen Pregnancy, among others. Data are published by NCHS, in professional journals, used by private academic and nonprofit researchers, and cited by journalists and others.

The NSFG Cycle 6 pretest will include interviews with about 600 males and 600 females and will test a variety of procedures to improve the quality and usefulness of the data. The interviews are conducted in person by trained female interviewers in respondents homes. Interviews average 60 minutes for males and 80 minutes for females. Remuneration is proposed, and will be the subject of an experiment in the pretest. The pretest is in preparation for a main study that will include interviews with 7,200 males and 11,800 females in 2001 or 2002. The annualized burden is estimated to be 1,684.

Pretest	Number of respondents	Number of responses per respondent	Average hours per respondent
Screening	2000	1	5/60
Interviewing:			
Males	600	1	1
Females	600	1	80/60
Verification	200	1	5/60
Cognitive	100	1	1

Dated: August 18, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–21611 Filed 8–23–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–67–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

2001 National Health Interview Survey, Basic Module (0920–0214)—Revision—The National Center for Health Statistics (NCHS)—The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. Due to the integration of health surveys in the Department of Health and Human Services, the NHIS also has become the sampling frame and first stage of data collection for other major surveys, including the Medical Expenditure Panel Survey, the National Survey of Family Growth, and the National Health and Nutrition Examination Survey. By linking to the NHIS, the analysis potential of these surveys increases. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally-mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, ''Healthy People 2000.''

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a redesign of the data collection system from paper questionnaires to computer assisted personal interviews (CAPI). Those redesigned elements were partially implemented in 1996 and fully implemented in 1997 and are expected to be in the field until 2006. This clearance is for the fifth full year of data collection using the Basic Module on CAPI, and for implementation of the second ''Periodic Module'', which include additional detail questions on conditions, access to care, disabilities, and health care utilization. The ''Periodic Module'', will repeat a similar survey conducted in 1992, and will help track many of the Health People 2010 objectives. This data collection, planned for January–December 2001, will result in publication of new national estimates of health statistics, release of public use micro data files, and a sampling frame for other integrated surveys. The annualized burden is 48,600 hours.

Questionnaire (respondent)	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)
Family core (adult family member)	42,000	1	21/60
Adult core (sample adult)	42,000	1	21/60
Child core (adult family member)	18,000	1	15/60
Periodic module (sample adult)	42,000	1	21/60
All households	42,000	1	110/60

Dated: August 18, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–21612 Filed 8–23–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0186]

International Conference on Harmonisation; Draft Guidance on M4 Common Technical Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''M4 Organization of the Common Technical Document for the Registration of Pharmaceuticals for Human Use'' (M4 Common Technical Document). The draft guidance was developed under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance, which is being made available simultaneously in four parts, describes a harmonized format and content for new product applications (including applications for biotechnology-derived products) for submission to the regulatory authorities in the three ICH regions. The M4 Common Technical Document is intended to reduce the time and resources used to compile applications, ease the preparation of electronic submissions, facilitate regulatory reviews and communication with the applicant, and simplify the exchange of regulatory information among regulatory authorities.

DATES: Submit written comments on the draft guidance by September 30, 2000.

ADDRESSES: Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the draft guidance are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or at http://www.fda.gov/cber/publications.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers

Lane, Rockville, MD 20857; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your requests.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: For the safety (nonclinical) components: Joseph J. DeGeorge, Center for Drug Evaluation and Research (HFD–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5476.

For the quality components: Charles P. Hoiberg, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857,301–594–2570; and Neil D. Goldman, Center for Biologics Evaluation and Research (HFM–20), Food and Drug Administration,1401 Rockville Pike, Rockville, MD 20852, 301–827–0377.

For the efficacy (clinical) sections: Robert J. DeLap, Center for Drug Evaluation and Research (HFD–105), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2250.

Regarding the ICH: Janet J. Showalter, Office of International Programs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements.

ICH was organized to provide an opportunity for harmonization initiatives to be developed with input from both regulatory and industry representatives. ICH is concerned with harmonization among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Therapeutics Products Programme, and the European Free Trade Area.

The ICH process has achieved significant harmonization of the technical requirements for the approval of pharmaceuticals for human use in the three ICH regions. However, until recently, the application documents in the three ICH regions had not been examined, and there are different requirements in the regions for the composition and organization of product applications. As a result, three Expert Working Groups for Quality, Safety, and Efficacy have been developing harmonized guidance for the content and format of common sections of an application, called the ''common technical document.'' Once finalized, the guidance ''M4 Common Technical Document'' will describe an acceptable format and content for applications for human pharmaceuticals that, once supplemented with regional particulars, can be used with new products for submission to the regulatory authorities in the three ICH regions. In the **Federal Register** of February 11, 2000 (65 FR 7024), the agency announced the availability of initial components of the draft guidance and requested public comment. Comments from that announcement were considered in developing this draft guidance.

In July 2000, the ICH Steering Committee agreed that a draft guidance entitled ''M4 Common Technical Document'' should be made available for public comment. Comments about the draft guidance will be considered by FDA and the appropriate expert working group.

To facilitate the process of making ICH guidances available to the public, the agency is changing its procedures for publishing ICH guidances. Since April 2000, we no longer include the text of ICH guidances in the **Federal Register** Instead, we publish a notice in the **Federal Register** announcing the availability of an ICH guidance. The ICH guidance is placed in the docket and can be obtained through regular agency sources (see the **ADDRESSES** section). The draft guidance is left in the original ICH format. The final guidance will be reformatted to conform to the GGP style before publication.

In accordance with FDA's good guidance practices (GGP) (62 FR 8961, February 27, 1997), ICH guidance documents are now being called guidances, rather than guidelines.

II. The Common Technical Document

The draft guidance describes a harmonized format and content for new product applications (including applications for biotechnology-derived products) for submission to the regulatory authorities in the three ICH regions. The common technical document is intended to reduce the time and resources used to compile applications, ease the preparation of electronic submissions, facilitate regulatory reviews and communication with the applicant, and simplify the exchange of regulatory information among regulatory authorities.

The draft guidance addresses the organization of information presented in new product applications. With appropriate modifications, the draft guidance may be applied to abbreviated or other applications. The draft guidance is not intended to indicate what studies should be included, but merely to indicate an appropriate format for data that are submitted.

The common technical document should be viewed as the common part of a submission for new products, presented in a modular fashion with summaries and tables. It is intended that one of the modules (module I) in the common technical document be reserved as a region-specific module, and thus will not be harmonized.

When finalized, the common technical document modular structure is envisioned as shown in the graphic at the end of this notice and the following table of contents for the document:

Module I: Administrative Information and Prescribing Information Documents are region specific; for example, application forms, prescribing information.

Module II: Common Technical Document Summaries

A. Overall Common Technical Document Table of Contents

B. Overall Summaries

1. Introduction

2. Quality Overall Summary

3. Nonclinical Overall Summary

4. Clinical Overall Summary

C. Nonclinical Summaries

1. Pharmacology

a. Written summary

b. Tabulated summary
2. Pharmacokinetics
a. Written summary
b. Tabulated summary
3. Toxicology
a. Written summary
b. Tabulated summary
D. Clinical Written Summary
1. Biopharmaceutics and Associated Analytical Methods
2. Clinical Pharmacology
3. Clinical Efficacy
4. Clinical Safety
5. Synopses of Individual Studies
Module III: Quality
A. Table of Contents
B. Body of Data
Module IV: Nonclinical Study Reports
A. Table of Contents
B. Study Reports
C. Key Literature References
Module V: Clinical Study Reports
A. Table of Contents
B. Study Reports
C. Key Literature References

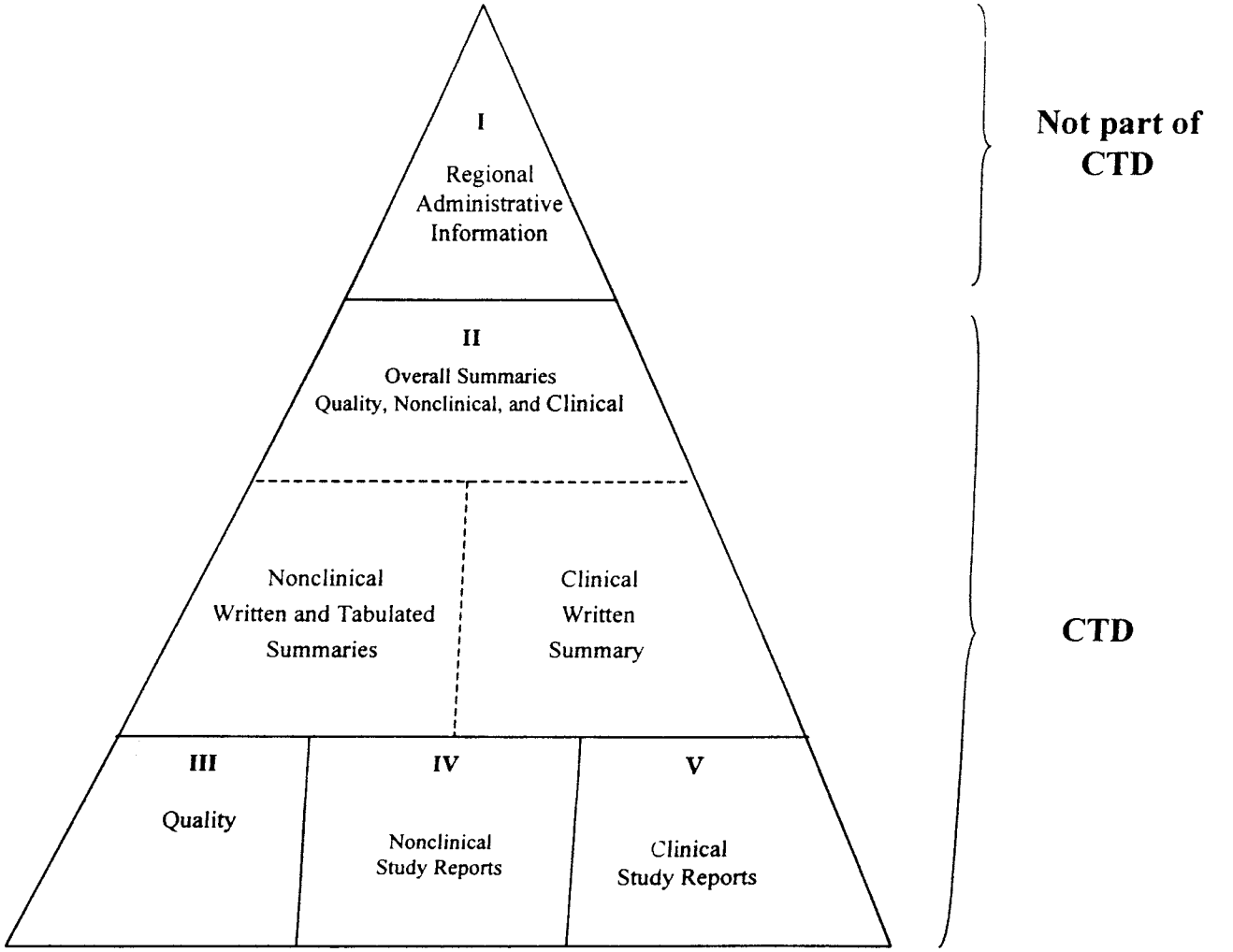
The draft guidance being made available with this notice is the product of the ICH Common Technical Document Expert Working Groups for Quality, Safety, and Efficacy. To facilitate the handling of the guidance, it is being made available in four parts: (1) A description of the organization of the M4 Common Technical Document; (2) the Quality section; (3) the Safety, or nonclinical section; and (4) the Efficacy, or clinical section.

This draft guidance represent the agency's current thinking on the content and format of a common application for new products (i.e., the common technical document). The draft guidance does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance by September 30, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The components of the draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

BILLING CODE 4160–01–F

Diagrammatic Representation of the ICH Common Technical Document



Dated: August 15, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–21563 Filed 8–23–00; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Oncology Subcommittee of the Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 12, 2000, 1 p.m. to 5:30 p.m.

Location: Hyatt Regency, One Bethesda Metro Center, Bethesda, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: SomersK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will discuss parameters used in oncology for extrapolation from the adult to the pediatric setting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by September 6, 2000. Oral presentations from the public will be scheduled between approximately 1:15 p.m. and 2:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 6, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 30-minute open public session may be conducted for interested persons who have submitted their request to speak by September 6, 2000, to address issues specific to the topic before the subcommittee.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 15, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–21561 Filed 8–23–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–57]

Notice of Proposed Information Collection: Comment Request; Request Voucher for Grant Payment—LOCCS Voice Response Access Authorization

AGENCY: Office of the Administration for Chief Financial Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due:* October 23, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2535–0102) should be sent to: Wayne Eddins, Reports Management Officer, Department or Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 800a, Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request Voucher For Grant Payment—LOCCS Voice Response Access Authorization.

OMB Control Number, if applicable: 2535–0102.

Description of the need for the information and proposed use: Request vouchers are used by recipients to request distribution of grant funds through access to the Department's voice activated payment system. Information collected will be used as mechanism to safeguard Federal funds and to facilitate the payment of funds to recipients.

Agency form numbers, if applicable: HUD–27053, HUD–27053–A/B, HUD–27054.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 41,133, number of respondents is 2,000, frequency of response is on occasion, and the hours per response is 0.17.

Status of the proposed information collection: Extension without change of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 18, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–21606 Filed 8–23–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Robert G. Pali, Laverock, PA, PRT–031956

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Adam Radolinski, South Hales, NY, PRT–031958

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Wildlife Conservation Society, Bronx, N.Y., PRT–024712

The applicant has requested amendment to their application for which notice was published on April 13, 2000/Vol. 65, No. 72, page 19918. The applicant wishes to increase the number of Kihansi spray toads to be imported from 100 to 500 from the Kihansi River Gorge area of Tanzania for the purpose of propagation for the enhancement of the survival of the species.

Applicant: Cleveland Metroparks Zoo, Cleveland, N.Y., PRT–032484

The applicant requests a permit to export five captive-held Andean condors (*Vultur gryphus*) to BIOANDINA, Merida, Venezuela, for the purpose of enhancement of the survival of the species through propagation, conservation education, and possible release to the wild.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 18, 2000.

Charlie Chandler,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–21689 Filed 8–23–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On May 22, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 99, Page 32121, that an application had been filed with the Fish and Wildlife Service by Darrell W. Hindman, St. Louis, MO, for a permit (PRT–027204) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Northern Beaufort Sea polar bear population, Canada for personal use.

Notice is hereby given that on August 9, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On July 7, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 131, Page 42024, that an application had been filed with the Fish and Wildlife Service by W. Stephen Minore, Rockford, IL, for a permit (PRT–029703) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the McClintock Channel polar bear population, Canada for personal use.

Notice is hereby given that on August 9, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On February 10, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 28, Page 6618, that an application had been filed with the Fish and Wildlife Service by Horst J. Baier, Miami Beach, FL, for a permit (PRT–022027) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Southern Beaufort Sea polar bear population, Canada for personal use.

Notice is hereby given that on August 9, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On May 11, 2000, a notice was published in the **Federal Register**, Vol. 65, No. 92, Page 30425, that an application had been filed with the Fish and Wildlife Service by David B. Hartman, Canfield, OH, for a permit (PRT–026772) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the Southern Beaufort Sea polar bear population, Canada for personal use.

Notice is hereby given that on August 4, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Dated: August 18, 2000.

Charlie Chandler,

International Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–21690 Filed 8–23–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Atlantic Coastal Fisheries Cooperative Management Act Coordination Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Atlantic Coastal Fisheries Cooperative Management Act Coordination Committee. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION**.

DATES: The Atlantic Coastal Fisheries Cooperative Management Act Coordination Committee will meet from 9:00 a.m. to 3:00 p.m., Wednesday, October 25, 2000, and is open to the public.

ADDRESSES: The meeting will be held at the U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 800, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Morgan McCosh, U.S. Fish and Wildlife Service, at 703–358–1718.

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 103–206, as amended,

and Public Law 89–304, as amended, this notice announces a joint meeting of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

Topics to be discussed during the meeting include the coordination of activities that support Atlantic States Marine Fisheries Commission coastal fisheries management plans under the Atlantic Coastal Fisheries Cooperative Management Act and the Atlantic Striped Bass Conservation Act.

Minutes of the meetings will be maintained by the U.S. Fish and Wildlife Service, Room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the National Marine Fisheries Service, FX2, 8484 Georgia Ave., Suite 425, Silver Spring, Maryland 20910, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: August 18, 2000.

Cathleen I. Short,

Co-Chair, Atlantic Coastal Fisheries Cooperative Management Act Coordination Committee Assistant Director—Fisheries and Habitat Restoration.

[FR Doc. 00–21618 Filed 8–23–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–080–1210–XG]

Address Change for Salmon, Idaho Office

AGENCY: Bureau of Land Management, Upper Columbia-Salmon Clearwater District, Idaho, Interior.

ACTION: Notice of address change for Salmon, Idaho office.

SUMMARY: The Bureau of Land Management (BLM) will be moving into new office space in Salmon, Idaho effective October 2, 2000. The office will be located in the current Salmon-Challis National Forest building. The new address for BLM will be Rural Route 2, Box 600, Salmon, Idaho 83467. Also effective October 2, 2000, the main telephone number for BLM's Salmon office will be changed to 208–756–5100. Phone numbers for individual employees will be unchanged.

FOR FURTHER INFORMATION CONTACT: Jenifer Arnold (208) 769–5000.

Dated: August 18, 2000.

Ted Graf,

Acting District Manager.

[FR Doc. 00–21607 Filed 8–23–00; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–060–00–1430–ES; AZA 31252]

Notice of Realty Action; Bureau Motion; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Pima County, Arizona have been examined and found suitable for classification for lease or conveyance to the Pima County Board of Supervisors, a political subdivision, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Pima County Board of Supervisors proposes to use the lands for a recreational park.

Gila and Salt River Meridian, Arizona

T. 15 S., R. 12 E.,
Sec. 7, lots 5 to 20, inclusive.
The area described contains 80.43 acres.

This action is a motion by the Bureau of Land Management to make available lands identified and designated as disposal lands under the Safford District Resource Management Plan, dated August 1991, and are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. Detailed information concerning this action is available for review at the Bureau of Land Management, Tucson Field Office, 12611 East Broadway, Tucson, Arizona.

The lease/patent when issued will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States together with the right to prospect for, mine and remove the minerals.

4. A right-of way under the Act of February 15, 1901; 31 Stat. 90; 43 U.S.C. 959 for powerline purposes granted to Tucson Electric Power Company (*PHX 080650*).

5. A right-of way under the Act of October 21, 1976; 90 Stat. 2776; 43 U.S.C. 1761 for road purposes granted in accordance with the transportation plan for Pima County to Pima County Transportation and Flood Control (*AZA 18432*).

6. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

Detailed information concerning this action is available for review at the Bureau of Land Management, Tucson Field Office, 12661 East Broadway, Tucson, Arizona. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Field Manager, Tucson Field Office, 12661 East Broadway, Tucson, Arizona 85748.

Classification Comments: Interested persons may submit comments involving the suitability of the land for a public park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: August 10, 2000.

Jesse J. Juen,

Field Office Manager.

[FR Doc. 00–21653 Filed 8–23–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Announcement of Invitation for Bids on Oil from Federal Properties in the Gulf of Mexico

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Solicitation on Federal Royalty Oil.

SUMMARY: MMS is announcing a public competitive offering of approximately 35,000 barrels per day of crude oil to be taken as royalty in kind from Federal properties in the Gulf of Mexico. This solicitation may be found on the MMS Internet website at http://www.rmp.mms.gov.

DATES: See **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: See **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Leneau, Minerals Management Service, Procurement Branch, MS 2730, P.O. Box 25165, Denver Federal Center, Denver, CO 80225–0165; telephone number (303) 275–7385; fax (303) 275–7303; e-mail Todd.Leneau@mms.gov.

SUPPLEMENTARY INFORMATION: This Solicitation Number 1435–02–00–RP–40337 offers approximately 35,000 barrels of crude oil per day from selected Federal properties in the Gulf of Mexico. This solicitation was posted to the MMS Internet website on August 22, 2000, and may be found at http://www.rmp.mms.gov under the question ''What else is new?'' The solicitation may also be obtained by contacting Mr. Todd Leneau at the address in the **FOR FURTHER INFORMATION CONTACT** section above.

Bids should be submitted to the address provided in the solicitation. Bids will be due at that address on or before September 18, 2000. MMS will notify successful bidders and operators of production selected for royalty in kind on or before September 30, 2000. The royalty oil contracts will be effective November 1, 2000, and will have a 6-month term with a 6-month contract extension by mutual consent of both the winning bidder and MMS.

The Federal Government will begin taking the awarded royalty oil volumes for delivery to successful bidders beginning on November 1, 2000. Under the terms of this solicitation, operators will deliver the royalty oil to market centers such as St. James and Empire, Louisiana, where winning bidders will take delivery. Winning bidders will report deliveries to MMS using a *Microsoft Excel* spreadsheet. Pricing will be established in the contract.

MMS is allowing bidders to self-certify their financial solvency instead of posting a letter of credit. Details are available in the solicitation.

Royalty oil will be sold based on a competitive bidding process. The bid proposal will be based on formulas representing differentials from index prices. The highest bidder, exceeding or meeting minimum bid, will be notified by phone or e-mail and provided a list of properties from which to choose. After the highest bidder selects his/her properties, the list of remaining properties will be provided to the next highest bidder. This process will be continued until all the oil is selected or the minimum bid threshold is met.

As stated previously, this sale will be a competitive bidding process, whereby a minimum bid, for each oil type, based on differentials from index prices will be established. If the minimum bid price is not met, MMS will have the option to negotiate prices with the highest bidder.

This offering of crude oil continues the MMS's royalty-in-kind pilot program. MMS's objective is to identify circumstances in which taking oil and gas royalties as a share of production is a viable alternative to the usual practice of collecting oil and gas royalties as a share of the value received by the lessee from the sale of production.

Dated: August 21, 2000.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 00–21687 Filed 8–23–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Draft Supplemental EIS/EIR for Acquisition of Additional Water for Meeting the San Joaquin River Agreement Flow Objectives, 2001–2010

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to prepare a joint Draft Supplemental Environmental Impact Statement/Environmental Impact Report (DSEIS/EIR).

SUMMARY: The Bureau of Reclamation (Reclamation) and the San Joaquin River Group Authority (SJRGA) are preparing a joint DSEIS/EIR, pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), to evaluate the purchase of up to 50,000 acre-feet of water annually during the 2001 through 2010 water years from the SJRGA and its members to meet a 31-day spring pulse flow target in the San Joaquin River at Vernalis. The spring pulse flow target in a given water year is dependent on hydrological conditions and is established by Vernalis Adaptive Management Plan (VAMP) flow objectives within the San Joaquin River Agreement (SJRA). When supplemental flows required to meet the spring pulse flow target exceed 110,000 acre-feet, Reclamation may purchase up to an additional 50,000 acre-feet (i.e., above 110,000 acre-feet) to supplement the spring pulse flows. The additional pulse flows would enter as releases from water purveyors into the Tuolumne and/or Merced Rivers.

DATES: Written comments on the scope of the DSEIS/EIR must be received by September 28, 2000. Comments received after this date will be considered, but may not be included in the resulting DSEIS/EIR scope.

ADDRESSES: Written comments should be sent to Mr. John Burke, Water Acquisition Program Manager (MP410), Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825; fax 916/978–5290.

FOR FURTHER INFORMATION CONTACT: Mr. Burke at the above address or by telephone at: 916/978–5556 (TDD 916/978–5608).

SUPPLEMENTARY INFORMATION: The SJRGA was established to provide a level of protection equivalent to the San Joaquin River flow objectives contained in the State Water Resources Control Board's (SWRCB) *1995 Water Quality Control Plan* for the lower San Joaquin River and San Francisco Bay-Delta Estuary (Delta). A key part of the SJRA is the VAMP which is a scientifically based adaptive fishery management plan to help determine the relationships between flows, exports, and other factors on fish survival in this region of the Delta. The SWRCB adopted pertinent provisions of the SJRA on December 29, 1999, and issued its Revised Water Right Decision 1641 (D–1641) containing these provisions on March 15, 2000. D–1641 approved implementation of the VAMP through December 31, 2011.

A joint Final EIS/EIR was prepared in January 1999 by the SJRGA and Reclamation to meet CEQA and NEPA requirements to address environmental impacts associated with acquiring water to meet the flow objectives in the SJRA. This document addressed the need for up to 110,000 acre-feet to meet a 31-day spring pulse flow target in the San Joaquin River at Vernalis. The SJRA allows for willing sellers among the SJRGA to sell Reclamation additional water when the spring pulse flow target exceeds 110,000 acre-feet. The Final EIS/EIR prepared for the SJRA acknowledged the need for this additional water from willing sellers in some water years but did not address the environmental impacts associated with acquiring this supplemental water.

The purpose of the DSEIS/EIR is to update and supplement analyses presented in the 1999 Final EIS/EIR to address the acquisition of up to 50,000 acre-feet of water annually during the 2001 through 2010 water years. The DSEIS/EIR analysis will include a detailed hydrologic analysis and will focus on potential impacts involving the following resources: Surface Water, Ground Water, Vegetation and Wildlife Resources, Fishery Resources, Land Use, Recreation, Energy Resources, and Cultural Resources. Also, the DSEIS/EIR will address the following issues: potential sources of water supply (e.g., carryover storage, ground water, conservation/tailwater recovery), alternative releases on the tributaries (Tuolumne and Merced rivers), effects on exports/water supply, estimated water quality at Vernalis, potential effects on anadromous fish including steelhead, and cumulative impacts.

Dated: August 10, 2000.

Richard G. Kristof,

Acting Regional Resources Manager.

[FR Doc. 00–20772 Filed 8–23–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 30, 2000 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–885–887 (Preliminary) (Desktop Note Counters and Scanners from China, Korea, and the United Kingdom)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 31, 2000; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on September 8, 2000.)
5. Outstanding action jackets:

(1) Document No. EC–00–015: Approval of final report in Inv. No. 332–412 (The Year in Trade 1999, Operation of the Trade Agreements Program, 51st Report).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 22, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–21763 Filed 8–22–00; 1:30 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 16, 2000.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Pension and Welfare Benefits Administration.

Title: Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers.

OMB Number: 1210–0117.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Frequency of Response: On occasion.

Total Respondents: 240,250.

Total Responses: 240,250.

Estimated Time Per Response: 20 minutes.

Total Estimated Burden Hours: 80,083.

Total Annualized Capital/Startup Costs: $0.

Total Annual Cost (Operating and Maintenance): $91,000.

Description: On February 2, 2000, the Department of Labor, Pension and Welfare Benefits Administration, the Department of the Treasury, Internal Revenue Service, and the Pension Benefit Guaranty Corporation announced the new computer scannable ''hand print'' and ''machine print'' formats for the revised Form 5500 Series. Using scannable forms and electronic filing technologies under the ERISA Filing and Acceptance System—EFAST, the revised Form 5500 Series was designed to simplify and expedite processing of returns/reports concerning the financial conditions and operations of certain employee benefit plans and fringe benefit plans.

In order to participate in the electronic filing program, applicants are required to submit an Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1), the subject of this ICR. Applicants who may file the Form EFAST–1 include: (1) individuals applying for an electronic signature to sign a Form 5500 or 5500–EZ; (2) transmitters applying for codes; and (3) software developers applying for codes. The information provided by Form EFAST–1 applicants, combined with the codes supplied to the applicants by EFAST, allows EFAST to verify a filer, transmitter, of software developer's standing as a qualified participant in the electronic filing program. EFAST–1 information also established a means of

contact between the program and the applicant.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–21626 Filed 8–23–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Record of Examination for Hazardous Conditions

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before October 23, 2000.

ADDRESSES: Send comments to Brenda C. Teaster, Acting Chief, Records Management Division, 4015 Wilson Boulevard, Room 709A, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to bteaster@msha.gov, along with an original printed copy. Mrs. Teaster can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Brenda C. Teaster, Acting Chief, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 709A, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mrs. Teaster can be reached at bteaster@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Coal mine operators are required by 30 CFR 77.1713 to conduct examinations of each active working area of surface mines, active surface installations at these mines, and preparation plants not associated with underground coal mines for hazardous conditions during each shift. A report of any hazardous conditions detected must be entered into a record book, along with a description of any corrective actions taken.

A number of potential hazards can exist at surface coal mines and facilities Highwalls, mining equipment, travelways, and the handling of mining materials each present possible hazardous conditions. Since promulgation of 30 CFR 77.1713 in 1971, numerous miners have either lost their lives at the areas affected by the subject standard or received injuries of varying degrees of seriousness. The majority of the injuries and fatalities resulted from hazardous conditions that had not been detected or corrected.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Record of Examinations for Hazardous Conditions. MSHA is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (http://www.msha.gov) and selecting ''Statutory and Regulatory Information'' then ''Paperwork Reduction Act submission (http://www.msha.gov/regspwork.htm)'', or by contacting the employee listed above in the For Further Information Contact section of this notice for a hard copy.

III. Current Actions

By conducting an on-shift examination for hazardous conditions, the mine operator better guarantees a safe working environment for the miners and a reduction in accidents. Examinations for hazardous conditions are required to be conducted each shift. To do so less frequently could allow unsafe conditions to go undetected that might result in an accident.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Record of Examination for Hazardous Conditions.

OMB Number: 1219–0083.

Affected Public: Business or other for-profit institutions.

Cite/Reference/Form/etc: 30 CFR 77.1713.

Total Respondents: 1,215.

Frequency: On occasion.

Total Responses: 411,885.

Average Time per Response: 1.5 hours.

Estimated Total Burden Hours: 617,828.

Estimated Total Burden Hour Cost: $32,417,434.

Estimated Total Burden Cost (capital/startup): $0.

Estimated Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 18, 2000.

Brenda C. Teaster,

Acting Chief, Records Management Division.

[FR Doc. 00–21627 Filed 8–23–00; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Main Fan Operation and Inspection

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This

program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before October 23, 2000.

ADDRESSES: Send comments to Brenda C. Teaster, Acting Chief, Records Management Division, 4015 Wilson Boulevard, Room 709A, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to bteaster@msha.gov, along with an original printed copy. Ms. Teaster can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Brenda C. Teaster, Acting Chief, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 709A, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Teaster can be reached at bteaster@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Title 30, CFR 57.22204, which is applicable only to specific underground mines that are categorized as gassy, requires main fans to have pressure-recording systems. Main fans are to be inspected daily while operating if persons are underground, and certification of the inspection is to be made by signature and date. When accumulations of explosive gases such as methane are not swept from the mine by the main fans, they may reasonably be expected to contact an ignition source. The results are usually disastrous and multiple fatalities may be expected to occur. The main fan requirements of this standard are significantly more stringent than those imposed on nongassy mines.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Main Fan Operation and Inspection. MSHA is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and selecting ''Statutory and Regulatory Information'' then ''Paperwork Reduction Act Submissions (http://www.msha.gov/regspwork.htm)'', or by contacting the employee listed above in the For Further Information Contact section of this notice for a hard copy.

III. Current Actions

Information collected through the pressure recordings is used by the mine operator and MSHA for maintaining a constant vigil on mine ventilation, and to ensure that unsafe conditions are identified early and corrected. Technical consultants may occasionally review the information when solving problems.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

*Title:*Main Fan Operation and Inspection.

OMB Number: 1219–0030.

Affected Public: Business or other for-profit.

Frequency: Daily.

Record keeping: One year.

Cite/Reference/Form/etc: 30 CFR 57.22204.

Total Respondents: 7.

Total Responses: 2,625.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 1,313.

Total Annualized Capital/Startup Costs: $735.

Total Operating and Maintenance Costs: $735.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 18, 2000.

Brenda C. Teaster,

Acting Chief, Records Management Division.

[FR Doc. 00–21628 Filed 8–23–00; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–096)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The invention listed below is assigned to the National Aeronautics and Space Administration, has been in the United States Patent and Trademark Office, and is available for licensing.

NASA Case Code No. ARC 14366–1: Masked Proportional Routing.

DATES: August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Rob Padilla, Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; Tel. (650) 604–5104; Fax (650) 604–7486.

Dated: August 16, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–21580 Filed 8–23–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–07]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing:

NASA Case No. MSC 22724–2/3/4/5: Endothelium Preserving Microwave Treatment for Atherosclerosis;

NASA Case No. MSC 22743–2/3: Moving Object Control System;

NASA Case No. MSC 22931–1: Androgynous, Reconfigurable Closed Loop Feedback Controlled Low Impact Docking System with Load Sensing Electromagnetic Capture Ring;

NASA Case No. MSC 22953–1: Method and Apparatus for Reducing the Vulnerability of Latches to Single Event Upsets;

NASA Case No. MSC 22980–1: Bubble Measuring Instrument and Method;

NASA Case No. MSC 23026–1: Manually Operated Welding Wire Feeder;

NASA Case No. MSC 23049–1: Microwave Treatment System for Prostate Cancer and Hyperplasia;

NASA Case No. MSC 23076–1: Portable Hyperbaric Chamber;

NASA Case No. MSC 23089–1: Improved Circularly Polarized Microstrip Antenna;

DATES: August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Edward Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, Texas, 77058–3696; Tel. (281) 483–4871; Fax (281) 244–8452.

Dated: August 16, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–21581 Filed 8–23–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–098]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing:

NASA Case No. KSC 11886: Extreme Wind Velocity Measurement System;

NASA Case No. KSC 12052: Communications Interface for Wireless Communications Headset.

DATES: August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Diana Cox, Patent Counsel, Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL, 32899; Tel. (321) 867–7214; Fax (321) 867–1817.

Dated: August 16, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–21582 Filed 8–23–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–099]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing:

NASA Case No. LAR 15361–2: Gas Sensor Detector Balancing;

NASA Case No. LAR 15463–2–SB: Fabrication of Molded Magnetic Article (Div of –1);

NASA Case No. LAR 15493–2/3/4: Pistons and Cylinders Made of Carbon-Carbon Composites (Div of –1);

NASA Case No. LAR 15499–1: Method and Apparatus for Assessment of Changes in Intracranial Pressure;

NASA Case No. LAR 15508–1: Distributed Rayleigh Scatter Fiber Optic Strain Sensor;

NASA Case No. LAR 15555–2: Molecular Level Coating of Metal Oxide Particles;

NASA Case No. LAR 15761–1–SB: Melt-Extrusion of Polyimide Fibers, Ribbons, Rods, and Shaped Parts;

NASA Case No. LAR 15816–1: Piezoelectric Macro-Fiber Composite Actuator and Method for Making Same;

NASA Case No. LAR 15818–2: Optical Path Switching Based Differential Absorption Radiometry for Substance Detection;

NASA Case No. LAR 15831–3: Hollow Polyimide Microspheres;

NASA Case No. LAR 15856–1: Device and Method for Reducing Aircraft Noise;

NASA Case No. LAR 15934–1: Edge Triggered Apparatus and Method for Measuring Strain in Bragg Gratings;

NASA Case No. LAR 16093–1: Thickness Measurement Device for Ice or Ice Mixed with Water or Other Liquids (CIP of 15825 which was a CIP of 15061–1).

DATES: August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Linda Blackburn, Patent Attorney, NASA Langley Research Center, Mail Code 212, Hampton, VA 23681–2199; Tel. (757) 864–9260; Fax (757) 864–9190.

Dated: August 16, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–21583 Filed 8–23–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–100]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing:

NASA Case No. LEW 16056–2: Design and Manufacture of Long Life Hollow Cathode Assemblies;

NASA Case No. LEW 16803–1: Segmented Thermal Barrier Coating;

NASA Case No. LEW 16833–1: Self Tuning Impact Damper;

NASA Case No. LEW 16968–1: Development of Processable Polyimides for High Temperature Applications with the Use of Triamine Additives;

NASA Case No. LEW 16987–1: New Latent Reactive Endcaps for Polymers with Improved Thermal Oxidative Stability;

NASA Case No. LEW 17012–1: Cyclohexene Endcaps for Polymers with Improved Thermal Oxidative Stability;

NASA Case No. LEW 26691–1: PMR Extended Shelf Life Tech—A Chemical Process to Significantly Retard the Premature Aging of PMR Resin Solutions and PMR Prepregs.

DATES: August 24, 2000.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, Glenn Research Center at Lewis Field, Mail Code 500–118, Cleveland, Ohio 44135; Tel. (216) 433–8855; Fax (216) 433–6790.

Dated: August 16, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–21584 Filed 8–23–00; 8:45 am]

BILLING CODE 7510–10–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–101]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing:

NASA Case No. MFS 26503–1: Microgravity Fiber Pulling Apparatus;
NASA Case No. MFS 31066–1: Attachment Fitting for Pressure Vessel;
NASA Case No. MFS 31230–1: Method and Apparatus for Reading Two Dimensional Identification Symbols Using Radar Techniques;
NASA Case No. MFS 31289–1: Method and System for Reducing Plasma Loss in a Magnetic Mirror Fusion Reactor;
NASA Case No. MFS 31331–1: Infrared Communication System;
NASA Case No. MFS 31340–1: Lightweight Fluid Container;
NASA Case No. MFS 31341–1: Atomic-Based Combined Cycle Propulsion System and Method;
NASA Case No. MFS 31343–1: Low-Cost Gas Generator and Ignitor;
NASA Case No. MFS 31364–1: Small Mobility Base Docking Simulator;
NASA Case No. MFS 31368–1: Electro-Mechanical Multi-Message Display;
NASA Case No. MFS 31387–1: Gravity Responsive NADH Oxidase of the Plasma Membrane;
NASA Case No. MFS 31388–1: Identification of the Biological Clock;
NASA Case No. MFS 31396–1: Method of Making Molecular Connections on a Nanometric Scale Using Nucleic Acids;
NASA Case No. MFS 31403–1: Structural Assembly Device;
NASA Case No. MFS 31419–1: Apparatus & Method for Generating Thrust Using a Two Dimensional, Asymmetrical Capacitor;
NASA Case No. MFS 31438–1: Rocket Combustion Chamber Coating;
NASA Case No. MFS 31454–1: Thermally Activated Joining Apparatus.

DATES: August 24, 2000.

FOR FURTHER INFORMATION CONTACT: James McGroary, Patent Counsel, Marshall Space Flight Center, Code LS01, Huntsville, AL 35812; Tel. (256) 544–0013; Fax (256) 544–0258.

Dated: August 16, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–21585 Filed 8–23–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–103]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness (IOR).

DATES: Friday, September 1, 2000, 12:00 Noon–1:00 p.m. Eastern Daylight Time.

ADDRESSESS: NASA Headquarters, 300 E Street, SW, Room 7W31, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the safety and operational flight readiness of International Space Station (ISS) activities to be conducted on the Shuttle (STS–106) Mission (ISS assembly flight 2A.2b).

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: August 17, 2000.

Mathew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–21587 Filed 8–23–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–102]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Phoenix Systems International, Inc. of McDonald, OH, has applied for an exclusive license to practice the invention described and claimed in a U.S. Provisional Patent Application 60/163,045 entitled ''System for Reducing Nitrogen Oxide Emissions from Stationary Combustion Sources,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Patent Counsel, Assistant Chief Counsel, NASA, Mail Code: CC–A, Office of the Chief Counsel, John F. Kennedy Space Center, Kennedy Space Center, FL 32899.

DATES: Responses to this Notice must be received on or before October 23, 2000.

FOR FURTHER INFORMATION CONTACT: Diana M. Cox, Patent Counsel/Assistant Chief Counsel, NASA, Office of the Chief Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: August 16, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–21586 Filed 8–23–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the National Museum Services Board and the National Commission on Libraries and Information Science; Sunshine Act Meeting

AGENCY: Institute of Museum and Library Sciences.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board and the National Commission on Libraries and Information Science. This notice also describes the function of the boards. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME/DATE: 9:00 am–12:00 pm on Friday, September 15, 2000.

STATUS: Open.

ADDRESS: The Madison Hotel, 15th and M Streets, NW, Mt. Vernon Room—Salon C, Washington, DC 20005, (202) 862–1600.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The United States National Commission on Libraries and Information Science (NCLIS) is established under Public Law 91–345 as amended, The National Commission on Libraries and Information Science Act. In accordance with section 5(b) of the Act, the commission has the responsibility for advising the Director of the Institute of Museum and Library Services on general policies relating to library services.

The meeting on Friday, September 15, 2000 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Agenda

4th Annual Meeting of the National Museum Services Board and The National Commission on Libraries and Information Science at The Madison Hotel, 15th and M Streets, NW, Mt. Vernon Room—Room C, Washington, DC 20005 on Friday, September 15, 2000

9:00 am–12:00 pm

I. The Chairs' Welcome and Minutes of the 3rd Annual Meeting
II. Director's Welcome and Opening Remarks
III. Outcomes-based Evaluation: Methodology/Training Schedule
IV. National Leadership Grants
  a. Analysis: National Leadership Grants 2000
  b. Panel and Field Review Process
  c. Review of Guidelines
V. Emerging Issues in Digitization
  a. Presenters
  b. Q and A
VI. National Award for Museum Service/ National Award for Library Service
VII. Reauthorization update

Dated: August 15, 2000.

Linda Bell,

Director of Policy, Planning and Budget, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 00–21824 Filed 8–22–00; 3:38 pm]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Niagara Mohawk Power Corporation, et al.; Nine Mile Point Nuclear Station, Unit No. 2, Environmental Assessment and Finding of No Significant Impact

[Docket No. 50–410]

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–69, issued to Niagara Mohawk Power Corporation, et al. (the licensee), for operation of the Nine Mile Point Nuclear Station, Unit No. 2, located in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

The proposed action would amend Section 3.10.8, ''SHUTDOWN MARGIN (SDM) Test—Refueling,'' of the Nine Mile Point Nuclear Station, Unit No. 2, Technical Specifications (TS), correcting an administrative error introduced when Amendment No. 92 was processed.

The proposed action is in response to the licensee's application dated June 8, 2000.

The Need for the Proposed Action

On February 15, 2000, the staff issued Amendment No. 91, converting the TS to the Improved Technical Specifications format and style. Amendment No. 91 was to be fully implemented by August 31, 2000; in the interim, the licensee will continue to use the pre-Amendment No. 91 TS. On March 2, 2000, the staff issued Amendment No. 92, which imposes requirements on the Oscillating Power Range Monitor (OPRM) system on both the pre-Amendment No. 91 TS and post-Amendment No. 91 TS. Subsequently, the licensee found that certain pages contain inadvertent administrative errors (i.e., numbering of sections) in that certain pre- and post-Amendment No. 91 pages differ for no technical reason. By letter dated June 7, 2000, the licensee proposed to correct these errors which were inadvertently introduced during the review process of Amendment No. 92.

The proposed amendment involves administrative changes to the TS only. No actual plant equipment, regulatory requirements, operating practices, or analyses are affected by the proposed amendment.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the amendment is granted. No changes will be made to the design, licensing bases, or the applicable procedures at the unit. Other than the administrative changes, no other changes will be made to the TS. The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does did not involve the use of any resources not previously considered in the Final Environmental Statement related to the Nine Mile Point Nuclear Station, Unit 2.

Agencies and Persons Contacted

In accordance with its stated policy, on July 7, 2000, the staff consulted with the New York State official, Mr. Jack Spath, regarding the environmental impact of the proposed amendment. The State official had no comments.

Finding of No Significant Impact

On the basis of the foregoing environmental assessment, the NRC concludes that the proposed amendment will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to the proposed action, see the licensee's request for the amendment dated June 7, 2000, which is available at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 17th day of August, 2000.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–21667 Filed 8–23–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 11Ac1–3, SEC File No. 270–382, OMB Control No. 3235–0435.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 11Ac1–3, 17 CFR 240.11Ac1–3, under the Securities Exchange Act of 1934 requires disclosure on each new account and on a yearly basis thereafter, on the annual statement, the firm's policies regarding receipt of payment for order flow from any market makers, exchanges or exchange members to which it routes customers' order in national market system securities for execution; and information regarding the aggregate amount of monetary payments, discounts, rebates or reduction in fees received by the firm over the past year.

It is estimated that there are approximately 7,500 registered broker-dealers.[1] The staff estimates that the average number of hours necessary for each broker-dealer to comply with Rule 11Ac1–3 is fourteen hours annually. Thus, the total burden is 105,000 hours annually. The average cost per hour is approximately $85. Therefore, the total cost of compliance for broker-dealers is $8,925,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 17, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21633 Filed 8–23–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3272, Amdt. #4]

State of Wisconsin

In accordance with a notice from the Federal Emergency Management Agency, dated August 9, 2000, the above-numbered Declaration is hereby amended to include Juneau County, Wisconsin as a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on May 26, 2000 and continuing through July 19, 2000.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Jackson and Wood in the State of Wisconsin may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 9, 2000 and for economic injury the deadline is April 11, 2001.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 15, 2000.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–21620 Filed 8–23–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9I06, Amdt. #1]

State of Alaska

The above-numbered Declaration is hereby amended to include the Regional Educational Attendance Area #45, Southwest Region (previously referred to as REAA #6), as a contiguous area as a result of a fishery resource disaster, as determined by the Secretary of Commerce, due to extremely low salmon returns beginning in 1997 and continuing.

All other information remains the same, i.e., applications for economic injury may be filed until May 9, 2001.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: August 16, 2000.

Kris Swedin,

Acting Administrator.

[FR Doc. 00–21621 Filed 8–23–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3280]

Commonwealth of Pennsylvania

Allegheny and Westmoreland Counties and the contiguous Counties of Armstrong, Beaver, Butler, Cambria, Fayette, Indiana, Somerset, and Washington in the Commonwealth of Pennsylvania constitute a disaster area as a result of damages caused by flash flooding that occurred August 6 through 8, 2000. Applications for loans for physical damage from this disaster may be filed until the close of business on October 16, 2000 and for economic

[1] This estimate is based on FYE 1999 Focus Reports received by the Commission.

injury until the close of business on May 17, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.375
Homeowners without credit available elsewhere	3.687
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	6.750
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 328006 for physical damage and 9I0900 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 17, 2000.

Kris Swedin,

Acting Administrator.

[FR Doc. 00–21619 Filed 8–23–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3398]

Culturally Significant Objects Imported for Exhibition Determinations: ''Faberge—Hermitage Objects''

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, et seq.), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Faberge—Hermitage Objects,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Riverfront Arts Center in Wilmington, Delaware from on or about September 9, 2000 to on or about February 18, 2001, and possibly at an additional venue or venues yet to be determined is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: August 18, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–21788 Filed 8–23–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7820]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and its Subcommittees will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. All meetings will be open to the public.

DATES: CTAC will meet on Wednesday, September 13, 2000, from 9:00 a.m. to 3:30 p.m. The Subcommittee on Prevention Through People (PTP) will meet on Tuesday, September 12, 2000, from 8 a.m. to 4 p.m. The Subcommittee on Emergency Response will meet on Tuesday, September 12, 2000, from 1 p.m. to 4 p.m. The Subcommittee on the Revalidation of 46 CFR Part 151 Recommendations will meet on Tuesday, September 12, 2000, from 8 a.m. to 4 p.m. These meetings may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before August 31, 2000. Requests to have a copy of written material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before September 5, 2000.

ADDRESSES: CTAC will meet at the DoubleTree Hotel, 300 Canal Street, New Orleans, Louisiana. The Subcommittees will meet at the same address. Send written material and requests to make oral presentations to Commander Robert F. Corbin, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Robert F. Corbin, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

Chemical Transportation Advisory Committee (CTAC). The agenda includes the following:

(1) Introduction and swearing-in of the new members.

(2) Progress reports from the PTP and Emergency Response Subcommittees.

(3) Progress (Final) report from the Subcommittee on the Revalidation of 46 CFR Part 151.

(4) Presentation from Marine Safety Office New Orleans, LA on local port issues.

(5) Presentation on the Tankship Panam Perla Sulfuric Acid Incident; lessons learned.

(6) Update on International Maritime Organization (IMO) activities for the Subcommittee on Bulk Liquids & Gases.

Subcommittee on PTP. The agenda includes the following:

(1) Discussion of Crew Alertness Campaign task statement.

(2) Review of materials on Coast Guard Crew Alertness Campaign.

(3) Discussion to identify stakeholders and appropriate means to disseminate information for future awareness on Crew Alertness in the marine chemical transportation industry.

Subcommittee on Emergency Response. The agenda includes the following:

(1) Continuation of work on Subcommittee Task Statement to identify standards, guidelines, and programs involved with hazardous material emergency response.

Subcommittee on Revalidation of 46 CFR Part 151 Recommendations. The agenda includes the following:

(1) Agenda will be based on the results of the Subcommittee's meetings scheduled for August 23 and 24, 2000.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than August 31, 2000. Written material for distribution at a meeting should reach the Coast Guard no later than September 5, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than September 5, 2000.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: August 16, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–21566 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of Solicitation for Center of Excellence (COE) in General Aviation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The FAA is soliciting competitive proposals from academic institutions to form a General Aviation Center of Excellence (COE). A COE is that entity at a college or university designated as the principal focus for long-term research in selected areas of aviation technology. Centers of Excellence are designated through an evaluation and award procedure established pursuant to 49 U.S.C. 44513. The FAA will provide long-term funding to establish and operate the COE in support of general aviation. The grant recipient is required to match FAA funds with non-Federal funding over the term of the grant.

DATES: The closing date for submitting final proposals is November 1, 2000.

FOR FURTHER INFORMATION OR SOLICITATION PACKAGES CONTACT: Ms. Patricia Watts, Program Manager, FAA Centers of Excellence, AAR–400, Atlantic City International Airport, New Jersey, 08405, phone number (609) 485/5043, facsimile number (609) 485–4101, and e-mail patricia.watts@tc.faa.gov. Prior to final submission written questions may be submitted to the Program Manager, Center of Excellence. Answers will be distributed to all participants who request a solicitation package. Verbal questions are not acceptable.

SUPPLEMENTARY INFORMATION: The FAA intends to award a 50–50 cost share cooperative agreement to establish a Center of Excellence in General Aviation to a qualified college or university, or to a team of such institutions. The cooperative agreement will be awarded in 3-year increments up to a maximum of 10 years. It is the FAA's intent to fund a minimum of $300,000/year for the first three years. It is also the intent of the FAA to award a single-source indefinite delivery indefinite quantity (IDIQ) contract to the winner of the competition, under which orders may be placed for development products.

The FAA has identified a need for a Center of Excellence in General Aviation. The Center will conduct research, which includes the entire spectrum (*i.e.* basic research through engineering development, prototyping and testing) within the scope of General Aviation. This scope includes, but is not limited to, the following five functional areas:

1. Airport Technology;
2. Propulsion and Structures;
3. Aging Aircraft;
4. Flight Safety;
5. Fire Safety;
6. Training.

The FAA intends to provide long-term funding to establish and operate a prestigious partnership with academia, industry and government. To this end, the FAA encourages offerors to team with organizations that compliment their expertise from academia, industry, state/local government, and other governmental agencies. The successful offeror is required to match FAA grant funds with non-federal funding over the term of the cooperative agreement. Cost sharing (negotiated individually) shall also be required for any orders placed under the IDIQ contract.

Eligibility

Colleges and universities are eligible for cooperative agreements to establish a Center of Excellence in General Aviation. Individuals are not eligible for a COE designation and do not qualify for grants under this program. The FAA is seeking to ensure an equitable geographical distribution of funds and to encourage the inclusion of minority institutions.

Matching Funds Requirement

A Center of Excellence receives funding annually in the form of single or multiple continuing research grants over a three-year period. The federal government provides 50 percent of the costs of research. The institution must show a continuing source of non-Federal matching funds available for the remaining research. Once the COE is established, a fiscal report declaring the sources and amount of funding and expenditures must be submitted for review every 6 months to the COE program manager. A full review and grant closeout takes place at the conclusion of each three-year phase.

The Center of Excellence and the FAA shall agree upon the maximum expected costs in each fiscal year. Any cost incurred in excess of the maximum costs agreed upon with the agency shall be the sole obligation of the Center of Excellence.

The Center of Excellence is expected to account for all funds granted and matched, utilized to establish, operate, and conduct the specified research activities of the Center of Excellence.

Center Operations

The Center of Excellence shall maintain a close working relationship with the corresponding agency research program office. This relationship shall extend to participation in conference, meetings, joint research efforts, and submission of significant activity reports to the FAA on a routine basis. The COE shall prepare quarterly and semi-annual reports, and a fully inclusive annual report on research projects and fiscal expenditures, and shall host an on-site review of all research activities.

The FAA may require the COE to hold an annual joint symposium with the agency on topics relating to the status and results of the designated technology area. Researchers at the COE may serve as consultants by providing technical advice to the sponsoring agency program office. They may also be asked to participate on major planning and investigative committees related to general aviation.

Selection Criteria

The COE will be selected on the ability of the applicant to meet the following criteria mandated by 49 USC 44513:

- The extent to which the needs of the State in which the applicant is

located are representative of the needs of the region for improved air transportation services and facilities.

- The demonstrated research and extension resources available to the applicant for carrying out the intent of the legislation.
- The capability of the applicant to provide leadership in making national and regional contributions to the solution of both long-range and immediate air transportation problems.
- The extent to which the applicant has an established air transportation program.
- The demonstrated ability of the applicant to disseminate results of air transportation research and educational programs through a statewide or region-wide continuing education program.
- The research projects that the applicant proposes to carry out under the grant.

Award Date

The FAA anticipates that the selection of the Center of Excellence in General Aviation will be completed during the first quarter of calendar year 2001.

Issued in Atlantic County, New Jersey on August 15, 2000.

Herman A. Rediess,

Director, Office of Aviation Research.

[FR Doc. 00–21639 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for September 12–13, 2000, beginning at 8:30 a.m. on September 12. Arrange for oral presentations by September 7.

ADDRESSES: Boeing Commercial Airplane Group, 535 Garden Avenue, N., Building 10–16, Renton, WA.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075, or e-mail at effie.upshaw@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held September 12–13, 2000, in Renton, WA.

The agenda will include:

September 12

- Opening Remarks.
- FAA Report.
- Joint Aviation Authorities Report.
- Transport Canada Report.
- Executive Committee Meeting Report.
- Human Factors HWG Report.
- Engine Harmonization Working Group (HWG) Report.
- Avionics Systems HWG Report.
- General Structures HWG Report.
- Airworthiness Assurance Working Group Report.
- Seat Test HWG Report.
- Ice Protection HWG Report.
- Powerplant Installation HWG Report.
- Design for Security HWG Report.

September 13

- Flight Guidance System HWG Report.
- Systems Design and Analysis HWG Report.
- Extended Range with Two-Engine Aircraft (ETOPS) Tasking Update.
- Flight Test HWG Report.
- Electromagnetic Effects HWG Report.
- Loads & Dynamics HWG Report.
- Flight Controls HWG Report.
- Mechanical Systems HWG Report.
- Electrical Systems HWG Report.

Four HWGs—Powerplant Installation, Flight Control, Mechanical Systems, and Electrical Systems—plan to request ARAC approval of technical reports drafted under the Fast Track Process. The Ice Protection HWG plans to seek approval of its concept for a proposed certification rule addressing Title 14 Code of Federal Regulations 25.1419. The Electromagnetic Effects HWG plans to seek ARAC approval to forward a recommendation to the FAA consisting of a proposed rulemaking and advisory circular addressing high intensity radiated fields. The Loads and Dynamics HWG plans to seek approval of three work plans addressing landing limit descent velocities, ground handling conditions, and towing loads.

Attendance is open to the public, but will be limited to the availability of meeting room space and telephone lines. The public may participate by teleconference by contacting Norm Turner, (425) 234–3312, or by e-mail, *norman.g.turner@Boeing.com.* Details for participating in the teleconference will be available after September 6. Visitor badges are required to gain entrance to the building in which the meeting is being held. Please confirm your attendance with Norm Turner. Please provide the following information: full legal name, country of citizenship, and name of your company, if applicable.

The public must make arrangements by September 7 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be presented to ARAC for decision or as recommendations to the FAA may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on August 18, 2000.

Tony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 00–21643 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss emergency evacuation (EE) issues.

DATES: The meeting is scheduled for September 14, 2000, beginning at 8:30 a.m. Arrange for oral presentations by September 7.

ADDRESSES: Boeing Commercial Airplane Group, 535 Garden Avenue, N., Building 10–16, Renton, WA.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202)

267–5075, or e-mail at effie.upshaw@faa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held September 14, in Renton, WA.

The agenda will include:

- Opening Remarks.
- FAA Report.
- Joint Aviation Authorities Report.
- Cabin Safety Harmonization Working Group Report.
- Performance Standards Working Group Report.
- Emergency Evacuation Charter Update Proposal.

Attendance is open to the public, but will be limited to the availability of meeting room space and telephone lines. The public may participate by telephone by contacting Norm Turner, (425) 234–3312, or by e-mail, *norman.g.turner@Boeing.com.* Details for participating in the teleconference will be available after September 6. Visitor badges are required to gain entrance to the building in which the meeting is being held. Please confirm your attendance with Norm Turner. Please provide the following information: Full legal name, country of citizenship, and name of your company, if applicable.

The public must make arrangements by September 7 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation issues or by providing copies at the meeting. Copies of the documents to be voted upon may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign or oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on August 18, 2000.

Tony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 00–21644 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Applicatioan to Use the Revenue From a Passenger Facility Charge (PFC) at Central Illinois Regional Airport, Bloomington, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Central Illinois Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulation (14 CFR Part 158).

DATES: Comments must be received on or before September 25, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, 2300 E. Devon Ave., Room 320, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Bloomington-Normal Airport Authority at the following address: Mr. Michael La Pier, A.A.E., Executive Director, Central Illinois Regional Airport, 2901 East Empire, Suite 200, Bloomington, Illinois 61704.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Bloomington-Normal Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Denis Rewerts, Civil Engineer, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, 2300 E. Devon Ave., Room 320, Des Plaines, IL 60018, (847) 294–7195. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Central Illinois Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 7, 2000, the FAA determined that the application to use the revenue from a PFC submitted by the Bloomington-Normal Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 25, 2000.

The following is a brief overview of the application.

PFC application number: 00–03–00–BMI.

Level of the PFC: $3.00.

Actual charge effective date: December 1, 2010.

Estimated charge expiration date: November 1, 2021.

Total approved net PFC revenue: $12,028,636.00.

Brief description of proposed project: Construct new terminal development area.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Central Illinois Regional Airport.

Issued in Des Plaines, Illinois on August 15, 2000.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 00–21642 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application to Impose and Use a Passenger Facility Charge (PFC) at Jack McNamara Field, Crescent City, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Jack McNamara Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 25, 2000.

ADDRESSES: Comments on this application may be mailed or delivered

in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael Young, Airport Manager, County of Del Norte, at the following address: 981 H Street, Suite 110, Crescent City, CA 95531. Air carriers and foreign air carriers may submit copies of written comments previously provided to the county of Del Norte under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jack McNamara Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 1, 2000 the FAA determined that the application to impose and use a PFC submitted by the County of Del Norte was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 31, 2000.

The following is a brief overview of the impose and use application No. 00–02–C–00–CEC:

LEVEL OF PROPOSED PFC: $3.00.

Proposed charge expiration date: September 1, 2013.

Total estimated PFC revenue: $463,628

Brief description of the proposed projects: Install Replacement Fuel System, Install Security Fencing—Phase I, Reconstruct and Expand Automobile Parking Lot, Airport Layout Plan Update, Install 50,000-gallon Water Tank, Terminal Building Renovation Project, Environmental Study (Airport South Development), New Terminal Building—Preliminary Design & Studies, Install Security Fencing—Phase II, Acquire Safety Equipment (Tractor & Sweeper), Fire Suppression Water Line, Install Runway Guidance System PAPI, Runway 35.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Del Norte.

Issued in Hawthorne, California, on August 1, 2000.

Herman C. Bliss,

Manager, Airports Division Western-Pacific Region.

[FR Doc. 00–21641 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Passenger Facility Charges; Applications, etc.: T.F. Green State Airport, RI

Notice of Intent to Rule on Application to impose and use the revenue from a passenger facility charge (PFC) at T. F. Green State Airport, Warwick, Rhode Island for projects at T. F. Green State Airport, Warwick, Rhode Island; Block Island State Airport, New Shoeham, Rhode Island; North Central State Airport, Smithfield, Rhode Island; Quonset State Airport, North Kingstown, Rhode Island and Westerly State Airport, Westerly, Rhode Island.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at T.F. Green State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 25, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Elaine Roberts, at the following address: Executive Director of Airports, Rhode Island Aviation Corporation, T.F. Green State Airport, 2000 Post Road, Warwick, Rhode Island, 02886.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Rhode Island Airport Corporation under section 158.23 of part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at T. F. Green State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 9, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Rhode Island Airport Corporation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 27, 2000.

The following is a brief overview of the application.

PFC Project #: 00–03–C–00–PVD

Level of the proposed PFC: $3.00

Proposed charge effective date: April 1, 2008

Proposed charge expiration date: August 1, 2012

Total estimated PFC revenue: $41,689,000

Brief description of proposed impose and use projects:

T.F. Green State Airport

Noise Mitigation Land Acquisition, North Ramp Rehabilitation, PFC Application Costs

Brief description of proposed impose projects:

T.F. Green State Airport,

New Airfield Maintenance Facility

Ticket Counter Expansion

Block Island State Airport

Expansion of Apron and Construct Taxiway to Runway 10
North Central State Airport
Rehabilitation of Apron
Quonset State Airport
Rehabilitation of Apron
Westerly State Airport
Rehabilitation of Apron and Taxiways B and C

Class or classes of air carriers which the public agency has requested to be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rhode Island Airport Corporation.

Issued in Burlington, Massachusetts on August 14, 2000.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 00–21640 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 30109]

Aviation Noise Abatement Policy 2000

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice, extend comment period.

SUMMARY: This notice is announcing an extension to the comment period on a recent notice regarding the proposed policy document, Aviation Noise Abatement Policy 2000. The recent notice was published in the **Federal Register** on July 14, 2000 with a comment period ending August 28, 2000. This notice extends that comment period.

DATES: Comments must be received on or before October 23, 2000.

ADDRESSES: Comments should be mailed in triplicate to: Federal Aviation Administration (FAA), Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 30109, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas L. Connor, Noise Division, AEE–100, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8933; facsimile, (202) 267–5594.

SUPPLEMENTARY INFORMATION:

Comments Invited

On July 14, the FAA published a notice in the **Federal Register** (65 FR 43802) requesting comments on the proposed policy document, Aviation Noise Abatement Policy 2000. This proposed FAA policy document reaffirms and incorporates the major tenets of the 1976 Aviation Noise Abatement Policy and includes subsequent developments. Several commenters requested additional time to respond to this policy, so the FAA is extending the opportunity for pubic comment from August 28 to October 23. This extension allows for a total comment period of 101 days so that interested persons can have sufficient time to express their concerns and contribute their suggestions to the policy.

Issued in Washington, DC, on August 18, 2000.

Paul R. Dykeman,

Deputy Director of Environment and Energy.

[FR Doc. 00–21638 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSAC–96–1, Notice No. 22]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee (''RSAC'') meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 3:30 p.m. on Thursday, September 14, 2000.

ADDRESSES: The meeting of the RSAC will be held at the Association of American Railroads' Conference Center, 50 F Street, NW, Washington, DC 20001, (202) 639–2565. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Trish Paolella, RSAC Coordinator, FRA, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590, (202) 493–6212 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee (''RSAC''). The meeting is scheduled to begin at 9:30 a.m. and conclude at 3:30 p.m. on Thursday, September 14, 2000. The meeting of the RSAC will be held at the Association of American Railroads' Conference Center, 50 F Street, NW Washington, DC, (202) 639–2565. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual representatives, drawn from among 29 organizations representing various rail industry perspectives, and 2 associate non-voting representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico. Staff of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

The RSAC will be briefed on the current status of activities of RSAC working groups and task forces responsible for carrying out tasks the RSAC has accepted involving blue signal protection, event recorders, the definition of reportable ''train accident'', roadway maintenance equipment safety standards, and incorporation of a provision for gage restraint measurement within the Track Safety Standards.

There will be discussion about the possible tasking of the Training and Qualification of Safety Critical personnel and a vote to approve the Draft Notice of Proposed Rulemaking (NPRM) on Standards for Processor Based Signal and Train Control Systems. Also, if the draft Notice of Proposed Rulemaking for Cab Working Conditions is approved by the Working Group, the full committee may be requested to consider recommendations for FRA action on that issue.

Informational status briefings concerning the Switching Operations Fatality Analysis task force efforts and the Grade Crossing Technical Working Group will be presented.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on August 18, 2000.

George Gavalla,

Associate Administrator for Safety.

[FR Doc. 00–21677 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Docket Number: [MARAD–2000–7832]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel INTEGRITY.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 25, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7832. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 am and 5 pm, ET, Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Gordon Angell, Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–5129.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested: Name of vessel: *Integrity.* Owner: Peter S. Whiting.

(2) Size, capacity and tonnage of vessel: According to the Applicant: The vessel is 46 feet long. The gross tonnage is 27 tons; the net tonnage is 25 tons.

(3) Intended use for vessel, including geographic region of intended operation and trade: According to the applicant: Vessel will primarily offer daily luncheon sails. Some weekend or weekly crewed charters may be offered. The vessel will be used for skippered charters in the Pacific Northwest including the waters of Puget Sound and San Juan Islands in the state of Washington.

(4) Date and place of construction and (if applicable) rebuilding: Vessel was built in 1984 in Taiwan.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators: According to the applicant: Vessel should have no impact on other commercial vessels in the area. Existing operators are primarily offering whale watch charters while we will be doing sailing excursions of varying lengths, from a few hours to several days. There are a few sailboats offering skippered charters, however they are mostly for week-long charters in the San Juan and Gulf Islands while we will primarily focus on afternoon luncheon charters with an occasional longer term charter.

(6) A statement on the impact this waiver will have on U.S. shipyards: According to the applicant: There should be no effect on U.S. shipyards by the granting of this waiver.

Dated: August 21, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–21684 Filed 8–24–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Docket Number: [MARAD–2000–7831]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MENEHUNE.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 25, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000-7831. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401,

Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–4357.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR § 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR Part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested: Name of vessel: MENEHUNE. Owner: John M. Cece and Mary F. Cece.

(2) Size, capacity and tonnage of vessel: According to the Applicant: MENEHUNE is 42 feet long, with a beam of 13 feet and a gross tonnage of 24 tons (Net Tons: 22).

(3) Intended use for vessel, including geographic region of intended operation and trade: According to the applicant: The intended use of the vessel, after the granting of the waiver, is to conduct recreational, and learning cruises (usually day sails) on the Chesapeake Bay. The maximum number of passengers/students will be six (6) (NOT for the purpose of transportation between US ports, but for the purpose of recreation, and teaching sailing).

This will enable the vessel to operate as an uninspected vessel with a coastwise endorsement. The charter/lessons will be conducted by Menehune Charters in conjunction with Menehune Marine Services and John and Mary Cece. Menehune Marine Services is a Maryland Corporation and citizen of the United States.

(4) Date and place of construction and (if applicable) rebuilding: Date of construction: 1982. Place of construction: Whitby, Canada.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators: According to the applicant: It is anticipated that there will be NO impact on other commercial passenger operators (we anticipate that our passengers/students will come from an existing database of persons who have sailed with us in the past). Our charter/teaching operation was established in 1980.

(6) A statement on the impact this waiver will have on U.S. shipyards: According to the applicant: Granting of this waiver will have a positive impact on US shipyards. In addition to the estimated $20,000 already deposited with US shipyards/suppliers for repair and upgrade of this vessel, we will continue to purchase stores, fuel, repairs, and wharfage from US businesses.

If the waiver is NOT granted, the vessel will NOT be used in commercial voyages, and expenditures will be minimal. In addition, if the business expands, we may purchase a larger vessel which will be U.S. built and certified as an Inspected Vessel.

Dated: August 21, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–21686 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

ACTION: National Advisory Council public meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to discuss the Council's awareness initiative and strategic focus. A public comment period is scheduled for 1:15 to 1:45. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Kathleen Dunn by September 5, 2000. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by September 15, 2000.

DATES: The meeting will be held on Thursday September 7, 2000, from 9:00 AM to 3:00 PM.

ADDRESSES: The meeting will be held in the Delaware Ballroom of the Marriott Wardman Park Hotel, 2660 Woodley Road, NW, Washington, DC 20008. The hotel's phone number is (202) 328–2000.

FOR FURTHER INFORMATION CONTACT: Kathleen R. Dunn, (202) 366–2307; Maritime Administration, MAR 810, Room 7209, 400 Seventh St., SW, Washington, DC 20590; Kathleen.Dunn@marad.dot.gov.

Authority: 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR 101–6.1005; DOT Order 1120.3B.

Dated: August 21, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–21685 Filed 8–23–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemption and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

PM—Party to application with modification request

Issued in Washington, DC, on August 10, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11862–N	The BOC Group, Murray Hill, NJ	4	09/29/2000
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	09/29/2000
12125–N	Mayo Foundation, Rochester, MN	4	09/29/2000
12142–N	Aristech Chemical Corp., Pittsburgh, PA	4	09/29/2000
12148–N	Eastman Kodak Company, Rochester, NY	4	09/29/2000
12158–N	Hickson Corporation, Conley, GA	4	09/29/2000
12181–N	Aristech, Pittsburgh, PA	4	09/29/2000
12205–N	Independent Chemical Corp., Glendale, NY	4	09/29/2000
12248–N	Ciba Specialty Chemicals Corp., High Point, NC	4	09/29/2000
12277–N	The Indian Sugar & General Engineering Corp. ISGE, Haryana, IX	1	09/29/2000
12281–N	ABS Group, Inc., Houston, TX	4	09/29/2000
12290–N	Savage Industries, Inc., Pottstown, PA	4	09/29/2000
12307–N	Kern County Dept. of Weights & Measures, Bakersfield, CA	4	09/29/2000
12325–N	Lifeline Technologies, Inc., Sharon Hill, PA	4	09/29/2000
12332–N	Automotive Occupant Restraints Council, Lexington, KY	4	09/29/2000
12339–N	BOC Gases, Murray Hill, NJ	4	09/29/2000
12343–N	City Machine & Welding, Inc. of Amarillo, Amarillo, TX	1	09/29/2000
12350–N	BAC Technologies, Ltd., West Liberty, OH	4	09/29/2000
12351–N	Nalco/Exxon Energy Chemicals, L.P., Freeport, TX	4	09/29/2000
12353–N	Monson Companies, South Portland, ME	4	09/29/2000
12355–N	Union Tank Car Company, East Chicago, IN	4	09/29/2000
12368–N	Occidental Chemical Corp., Dallas, TX	4	09/29/2000
12381–N	Ideal Chemical & Supply Co., Memphis, TN	4	10/31/2000
12388–N	Mountain Safety Research, Seattle, WA	4	10/31/2000
12391–N	Airgas Mgmt., Inc., Cheyenne, WY	4	10/31/2000
12392–N	Consani Engineering, Elsies River, SA	1	10/31/2000
12397–N	FMC Corporation, Philadelphia, PA	4	10/31/2000
12398–N	Praxair, Danbury, CT	4	10/31/2000
12401–N	DG Supplies, Inc., Hamilton, NJ	4	10/31/2000
12405–N	Air Products and Chemicals, Inc., Allentown, PA	4	10/31/2000
12406–N	Occidental Chemical Corporation Dallas, TX	4	09/29/2000
12412–N	Great Western Chemical Company, Portland, OR	4	10/31/2000
12413–N	CP Industries, Inc., McKeesport, PA	4	10/31/2000
12422–N	Connecticut Yankee Atomic Power Co., East Hampton, CT	4	10/31/2000
8308–M	Tradewind Enterprises, Inc., Hillsboro, OR	4	09/29/2000
8556–M	Gardner Cryogenics, Lehigh Valley, PA	4	09/29/2000
9266–M	ERMEWA, Inc., Houston, TX	4	09/29/2000
9847–M	FIBA Technologies, Inc., Westboro, MA	4	09/29/2000
10656–M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	09/29/2000
10672–M	Burlington Packaging, Inc., Brooklyn, NY	4	09/29/2000
10921–M	The Procter & Gamble Company, Cincinnati, OH	1	09/29/2000
10977–M	Federal Industries Corporation, Plymouth, MN	4	09/29/2000
11202–M	Newport News Shipbuilding and Dry Dock Company, Newport News, VA	4	09/29/2000
11296–M	Heritage Transport, LLC, Indianapolis, IN	4	09/29/2000
11406–M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	09/29/2000
11537–M	JCI Jones Chemicals, Inc., Milford, VA	4	09/29/2000
11722–M	CITERGAS, S.A., Civray, FR	4	09/29/2000
11769–M	Great Western Chemical Company, Portland, OR	4	09/29/2000
11769–M	Great Western Chemical Company, Portland, OR	4	09/29/2000
11769–M	Hydrite Chemical Company, Brookfield, WI	4	09/29/2000
11798–M	Air Products and Chemicals, Inc., Allentown, PA	1, 4	09/29/2000
12056–M	Defense of Defense (MTMC) Falls Church, VA	4	09/29/2000
12074–M	Van Hool NV B–2500 Lier Koningshooikt, BG	1	09/29/2000
12178–M	STC Technologies, Inc., Bethlehem, PA	1	09/29/2000

[FR Doc. 00–21565 Filed 8–23–00; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20972]

Laidlaw Inc., et al.—Control and Merger—918897 Ontario Inc., B. R. Babcock Limited, Babcock Coach Lines Limited, Lee Line Corp., and Lee Charter Services, Inc.

AGENCY: Surface Transportation Board Department of Transportation.

ACTION: Postponement of effective date and establishment of new filing dates.

SUMMARY: In a notice served and published in the **Federal Register** on July 13, 2000 (65 FR 43395), the Surface Transportation Board (Board) tentatively approved, *inter alia*, an application filed under 49 U.S.C. 14303 by Laidlaw Inc. (Laidlaw), a noncarrier, to acquire indirect control, through two subsidiaries, Laidlaw Transit Ltd., and Laidlaw Transit, Inc., of a noncarrier and several motor passenger carriers. Comments concerning the application were due to be filed by August 28, 2000, and if no opposing comments were received, the notice would become the final Board action and approval of the application would be effective on that date. Based on information in the application, the Board tentatively found the proposed transaction to be in the public interest. In *Laidlaw Inc., and Laidlaw Transit Acquisition Corp.—Merger—Greyhound Lines, Inc.,* STB Docket No. MC–F–20940 (STB served Aug. 18, 2000), however, the Board has requested additional information from Laidlaw and Greyhound Lines, Inc. (Greyhound), because Greyhound, in a recent filing with the Securities and Exchange Commission, indicated that Laidlaw is having financial problems and is curtailing funding to Greyhound. Greyhound indicated that if it does not find additional funding from other sources, it ''may not be able to continue to operate as a going concern.'' In view of this significant new development, the Board's tentative finding that the proposed transaction is in the public interest may no longer be appropriate. Accordingly, the effective date in this proceeding is being postponed pending further action by the Board. Interested persons and applicants may file comments under the schedule set out in this decision.

DATES: Comments may be filed by September 11, 2000. Applicants may file a reply to comments by September 25, 2000. Regardless of whether comments are filed, the effective date of this proceeding is postponed pending further order of the Board.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20972 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representative: Fritz R. Kahn, 1920 N Street (8th Floor), N.W., Washington, DC 20036–1601.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the Board's prior decision in this proceeding is postponed pending further order of the Board.

2. Comments and replies are now due by September 11, 2000, and September 25, 2000, respectively. Regardless of whether comments are filed, the prior decision will not become effective pending further order of the Board.

3. This decision will be effective on August 18, 2000.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration—HMCE–20, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

Decided: August 18, 2000.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 00–21676 Filed 8–23–00; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20940]

Laidlaw Inc. and Laidlaw Transit Acquisition Corp.—Merger—Greyhound Lines, Inc.

AGENCY: Surface Transportation Board, Department of Transportation.

ACTION: The Board is issuing a supplemental order directing the parties to the merger transaction to provide additional information.

SUMMARY: The Surface Transportation Board (Board) approved the merger of Greyhound Lines, Inc. (Greyhound) into Laidlaw Transit Acquisition Corp. (LTAC), a wholly owned subsidiary of Laidlaw Inc. (Laidlaw), a noncarrier,[1] under 49 U.S.C. 14303. *Laidlaw Inc. and Laidlaw Transit Acquisition Corp.—Merger—Greyhound Lines, Inc.*, STB Docket No. MC–F–20940 (STB served Dec. 17, 1998), 63 FR 69710 (Dec. 17, 1998).[2] In a recent filing with the Securities and Exchange Commission (SEC), Greyhound has indicated that it may not be able to continue operating due to financial difficulties related, at least in part, to financial problems of Laidlaw. We are directing the parties to the merger to provide information that would permit the Board to determine whether further action by the Board is necessary. Interested persons will also be given an opportunity to comment.

DATES: Comments must be filed by September 1, 2000. Replies must be filed September 15, 2000.

ADDRESSES: Send an original and 10 copies of any comments and replies referring to STB Docket No. MC–F–20940 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 14303, the Board must approve and authorize a proposed merger of intercity bus companies if we find the merger to be consistent with the public interest. In assessing the public interest, we must consider at a minimum: (1) the effect of the proposed merger on the adequacy of transportation to the public; (2) the total fixed charges that would result from the merger; and (3) the interest of affected carrier employees. 49 U.S.C. 14303(b). We may impose conditions governing the merger, *id.*, and issue supplemental orders in a

[1] By letter filed with the Board on June 13, 2000, Laidlaw advised the Board that Greyhound is now an indirect subsidiary of Laidlaw, as Greyhound is a subsidiary of Laidlaw Transportation, Inc., a noncarrier controlled by Laidlaw, and not a direct subsidiary of Laidlaw as was described and anticipated in the application filed in this proceeding in November 1998.

[2] The December 17, 1998 order tentatively approved the merger. Because no opposing comments were filed, final Board approval became effective on February 1, 1999, without a further Board order. *See* 49 CFR 1182.5.

proceeding ''[w]hen cause exists,'' 49 U.S.C. 14303(j).

In our December 17, 1998 decision, we found that the LTAC-Greyhound merger was consistent with the public interest because, *inter alia*, at 3, the applicants had:

> assert[ed] that the proposed merger will significantly benefit the traveling public, employees, and shareholders, through the synergies, efficiencies, and savings that will result from the combined resources, skill, and operations of the two complementary companies. In this regard, it is anticipated that savings will be derived from volume purchases of vehicles, fuel, equipment, and services, and from reduced overhead and operating costs related to insurance, financing, headquarters, and securities and accounting reporting. The combined companies will be better positioned to manage equipment utilization, to develop financial and strategic plans, and to improve the operations with the goal of enhancing service to the public while achieving growth for the company. In this regard, Laidlaw's financial strength is expected to assist in reducing Greyhound's debt and permit investments for growth while improving customer service.

See also Application of Laidlaw, LTAC, and Greyhound at 11–15.

Recent developments, however, bring these assertions into serious question. In a report filed with the SEC for the quarter ending June 30, 2000 (Form 10–Q at 13), Greyhound stated that its main sources of liquidity had been cash flow from operations and funds provided by Laidlaw. Greyhound asserts, however, that ''Laidlaw has advised [Greyhound] that cash funding, after August 1, 2000, would be limited to the cash flow generated by [Greyhound] from its operations and that additional funds from Laidlaw would not be available.'' *Id.* Greyhound indicates that Laidlaw has authorized Greyhound to seek additional funding from outside sources, and Greyhound has begun seeking such financing. ''Should alternative sources not be available or not be sufficient to meet [Greyhound's] needs, [Greyhound] may be required to curtail or defer non-essential or essential capital and operating expenditures and may not be able to satisfy its obligations as they become due in the normal course of operations and may not be able to continue to operate as a going concern.'' *Id. See also* Frank Swoboda, ''Greyhound Seeks Financing Sources,'' *Wash. Post*, August 16, 2000, at E3, and Mark Heinzl, ''Greyhound Says Parent Laidlaw Has Cut Funds,'' *Wall St. J.*, August 17, 2000, at B16.

Greyhound's statements in its recent SEC filing are troubling. Its contention that it may not be able to continue to operate due, at least in part, to Laidlaw's financial problems appears to contradict the assertions made in the merger application that ''synergies'' would result from the merger and that Laidlaw's financial strength would be used to assist Greyhound. A sudden cessation of operations by Greyhound would not appear to be in the public interest. Accordingly, we find that cause exists to issue this supplemental order requiring Laidlaw and Greyhound to explain the nature of this potential transportation crisis and to indicate what future steps can and will be taken. These comments will be due by September 1, 2000. Copies of these comments will be available on our website at ''WWW.STB.DOT.GOV.'' Replies by interested parties may be filed by September 15, 2000. Based on the record developed, we will decide whether to impose conditions or take some other action in this proceeding.[3]

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The applicants in this proceeding are directed to submit comments in response to this order by September 1, 2000. Interested parties may comment or reply by September, 15, 2000.

2. A copy of this notice will be served on: (1) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; (2) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration—HMCE–20, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

3. Notice of this decision will be published in the **Federal Register**.

Decided: August 18, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–21675 Filed 8–23–00; 8:45 am]

BILLING CODE 4915–00–P

[3] The Board recently issued a notice tentatively approving Laidlaw's acquisition of additional carriers in *Laidlaw Inc., et al.—Control and Merger—918897 Ontario Inc., B.R. Babcock Limited, Babcock Coach Lines Limited, Lee Line Corp., and Lee Charter Services, Inc.*, STB Docket No. MC–F–20972 (STB served July 13, 2000), 65 FR 43395 (July 13, 2000). Public comments on that proposed transaction are currently due on August 28, 2000, but, in light of the recent SEC filings, the Board will be issuing a separate decision holding up the effectiveness of any approval in that proceeding.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission For OMB Review; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Department of the Treasury; and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the OCC, the OTS and the FDIC (collectively, the agencies) give notice that they plan to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below. The agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid control number.

DATES: Comments must be submitted on or before September 25, 2000.

ADDRESSES: You are invited to submit a comment to the OMB Reviewer and any or all of the agencies. Please direct your comments as follows:

OMB: Alexander T. Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC. 20503.

OCC: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Third Floor, Attention: 1557–0217, Washington, DC 20219. In addition, you may send a comment by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9:00 a.m. and 5:00 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

OTS: Manager, Dissemination Branch, Information Management and Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552,

Attention: 1550–0104. You may hand deliver your comments to the Guard's desk at 1700 G Street, NW.; or you may send comments by facsimile transmission to (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. If you comment by e-mail, you should include your name and telephone number. You should send any comments over 25 pages in length to FAX Number (202) 906–6956. You may inspect the comments at 1700 G Street, NW., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays. Comments are also available at OTS.treas.gov.

FDIC: Steven F. Hanft, Assistant Executive Secretary, Attention: 3064–0137, 550 17th Street, NW., Washington, DC 20429, (202) 898–3907, Attention: 3064–0137. You may hand-deliver comments to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838. Internet address: comments@fdic.gov].

FOR FURTHER INFORMATION CONTACT:

OCC: Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OTS: Ralph E. Maxwell, (202) 906–7740, Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

FDIC: Steven F. Hanft at the address listed above.

SUPPLEMENTARY INFORMATION:

Type of Review: Renewal, without change, of a currently approved collection.

Title: Interagency Guidance on Asset Securitization Activities.

OMB Numbers: OCC: 1557–0217; OTS: 1550–0104; FDIC: 3064–0137.

Estimate of Annual Burden: *Estimated Number of Respondents:* OCC: 50; OTS: 30; FDIC: 70.

Estimated Responses per Respondent: OCC: 1 per year; OTS: 1 per year; FDIC: 1 per year.

Estimated Total Annual Burden: OCC: 2,115 hours; OTS: 1,269 hours; FDIC: 2,070 hours.

Abstract: The collection applies to institutions engaged in asset securitization and consists of the development of a written asset securitization policy, the documentation of fair value of retained interests, and a management information system to monitor securitization activities. Institution management use the collection as the basis for the safe and sound operation of their asset securitization activities. The Agencies use the information to evaluate the quality of an institution's risk management practices.

Further information: Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the agency contacts listed above. The Board of Governors of the Federal Reserve System has participated in the development and review of this information collection and will process its extension under its Paperwork Reduction Act delegated authority.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the functions of the agencies, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on the respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 9, 2000.

Federal Deposit Insurance Corporation.

James D. La Pierre,

Deputy Executive Secretary.

Dated: August 15, 2000.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Dated: August 11, 2000.

Office of Thrift Supervision.

John E. Werner,

Director, Information Management and Services.

[FR Doc. 00–21571 Filed 8–23–00; 8:45 am]

BILLING CODE 4810–33–P, 6720–01–P, 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

August 18, 2000.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

DATES: Submit written comments on or before September 25, 2000.

OMB Number: 1550–0037.

Form Number: OTS Form 1240.

Type of Review: Regular.

Title: Fiduciary Powers of Federal Savings Associations.

Description: 2 CFR part 550 required Federal savings associations that want to exercise fiduciary powers to file an application containing information sufficient for adequate OTS review. Part 550 also requires Federal savings associations to keep adequate fiduciary records, including, but not limited to, documentation of the establishment and termination of each fiduciary account; requires Federal savings associations to note at least annually in the minutes of the Board of Directors' meeting the results of an audit (required at least once every calendar year) of its fiduciary activities; and requires Federal savings associations seeking to surrender their authority to exercise fiduciary powers to file with the OTS a certified copy of the resolution of its Board of Directors evidencing that intent.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Responses: 88.

Estimated Burden Hours Per Response: 3 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 261 hours.

Clearance Officer: Ralph E. Maxwell, (202) 906–7740, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

John E. Werner,

Director, Information and Management Services.

[FR Doc. 00–21609 Filed 8–23–00; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Thursday,
August 24, 2000

Part II

Department of Agriculture
Forest Service

Department of the Interior
Fish and Wildlife Service

36 CFR Part 242

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2001–2002 Subsistence Taking of Wildlife; Proposed Rules

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AG55

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2001–2002 Subsistence Taking of Wildlife

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for hunting and trapping seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 2001–2002 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking would replace the wildlife regulations included in the ''Subsistence Management Regulations for Public Lands in Alaska, Subpart D—2000–2001 Subsistence Taking of Fish and Wildlife Regulations,'' which expire on June 30, 2001. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board.

DATES: The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than October 27, 2000. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule September 12, 2000—October 13, 2000. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

ADDRESSES: You may submit written comments and proposals to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503. The public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Public Review Process—Regulation Comments, Proposals, and Public Meetings

The Federal Subsistence Board (Board) will hold meetings on this proposed rule at the following locations in Alaska:

North Slope Regional Council, Barrow, September 12, 2000
Southcentral Regional Council, Mentasta Lake Village, September 20, 2000
Northwest Arctic Regional Council, Kotzebue, September 21, 2000
Seward Peninsula Regional Council, Nome, September 26, 2000
Kodiak/Aleutians Regional Council, Nelson Lagoon, October 1, 2000
Western Interior Regional Council, Nulato, October 4, 2000
Yukon-Kuskokwim Delta Regional Council, Kotlik, October 9, 2000
Eastern Interior Regional Council, Tanana, October 11, 2000
Southeast Regional Council, Hydaburg, October 11, 2000
Bristol Bay Regional Council, Naknek, October 13, 2000

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings.

We will compile and distribute for additional public review during early November 2000 the written proposals to change the Subpart D hunting and trapping regulations and customary and the traditional use determinations in Subpart C. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on distributed proposals during the public comment period, which is presently scheduled to end on January 14, 2001.

We will hold a second series of Regional Council meetings in February and March 2001, to assist the Regional Councils in developing recommendations to the Board. You may also present comments on published proposals to change hunting and trapping and customary and traditional use determination regulations to the Regional Councils at those winter meetings.

The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage in May 2001. You may provide additional oral testimony on specific proposals before the Board at that time. The Board will then deliberate and take final action on proposals received that request changes to this proposed rule at that public meeting.

Please note: The Board will not consider proposals for changes relating to fish or shellfish regulations at this time. The Board will be calling for proposed changes to those regulations in January 2001.

By providing the following information, you will facilitate the Board's review of your comments and wildlife proposals: (a) Your name, address, and telephone number; (b) the section and/or paragraph of the proposed rule for which your change is being suggested; (c) a statement explaining why the change is necessary; (d) the proposed wording change; and (e) any additional information you believe will help the Board in evaluating your proposal. Proposals that fail to include the above information or that are beyond the scope of authorities in § .24, Subpart C, and § .25, Subpart D, may be rejected. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council staff members and on the basis of least harm to the subsistence user and the resource involved. Proposals should be specific to customary and traditional use determinations or to subsistence hunting and trapping seasons, harvest limits, and/or methods and means.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to

delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 would apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1999) and 50 CFR 100.11 (1999), and for the purposes identified therein, we divide Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in May 2001.

Proposed Changes From 2000–2001 Seasons and Bag Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations (§ .24 of subpart C) are also subject to an annual review process providing for modification each year. The text of the 2000–2001 Subparts C and D final rule, with no modifications, served as the foundation for the 2001–2002 Subparts C and D proposed rule. The regulations contained in this proposed rule will take effect on July 1, 2001, unless elements are changed by subsequent Board action following the public review process outlined herein.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992, and amended January 8, 1999, 64 FR 1276) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described below were approved by OMB under 44 U.S.C. 3501 and were assigned clearance number 1018–0075, which expires July 31, 2003. The information collection requirements described below will be submitted to OMB for approval beyond that date, if needed. We will not conduct or sponsor, and you are not required to respond to, a collection of

information request unless it displays a currently valid OMB control number.

The collection of information will be achieved through the use of the Federal Subsistence Hunt Permit Application. This collection of information will establish whether the applicant qualifies to participate in a Federal subsistence hunt on public lands in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence hunts on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy wildlife populations. The annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 6,000, yielding a total annual reporting and recordkeeping burden of 1,500 hours or less.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 222 ARLSQ, Washington, DC 20240. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B. We will submit for OMB approval any changes or additional information collection requirements not included in 1018–0075.

Other Requirements

This rule was not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound, would equate to $6 million Statewide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

Drafting Information

William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Curt Wilson, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend Title 36, part 242, and Title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

2. We propose to revise Subpart C of 36 CFR part 242 and 50 CFR part 100, § .24(a)(1) to read as follows:

§ .24 Customary and traditional use determinations.

(a) * * *

(1) Wildlife determinations.

Area	Species	Determination
Unit 1(C)	Black Bear	Residents of Unit 1(C), 1(D), 3, and residents of Hoonah, Pelican, Point Baker, Sitka, and Tenakee Springs.

Area	Species	Determination
1(A)	Brown Bear	Residents of Unit 1(A) except no subsistence for residents of Hyder.
1(B)	Brown Bear	Residents of Unit 1(A), Petersburg, and Wrangell, except no subsistence for residents of Hyder.
1(C)	Brown Bear	Residents of Unit 1(C), Haines, Hoonah, Kake, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.
1(D)	Brown Bear	Residents of 1(D).
1(A)	Deer	Residents of 1(A) and 2.
1(B)	Deer	Residents of Unit 1(A), residents of 1(B), 2 and 3.
1(C)	Deer	Residents of 1(C) and (D), and residents of Hoonah, Kake, and Petersburg.
1(D)	Deer	No Federal subsistence priority.
1(B)	Goat	Residents of Units 1(B) and 3.
1(C)	Goat	Residents of Haines, Kake, Klukwan, Petersburg, and Hoonah.
1(B)	Moose	Residents of Units 1, 2, 3, and 4.
1(C) Berner's Bay	Moose	No Federal subsistence priority.
1(D)	Moose	Residents of Unit 1(D).
Unit 2	Brown Bear	No Federal subsistence priority.
2	Deer	Residents of Unit 1(A) and residents of Units 2 and 3.
Unit 3	Deer	Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
3, Wrangell and Mitkof Islands	Moose	Residents of Units 1(B), 2, and 3.
Unit 4	Brown Bear	Residents of Unit 4 and Kake.
4	Deer	Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat.
4	Goat	Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove.
Unit 5	Black Bear	Residents of Unit 5(A).
5	Brown Bear	Residents of Yakutat.
5	Deer	Residents of Yakutat.
5	Goat	Residents of Unit 5(A)
5	Moose	Residents of Unit 5(A).
5	Wolf	Residents of Unit 5(A).
Unit 6(A)	Black Bear	Residents of Yakutat and residents of 6(C) and 6(D), except no subsistence for Whittier.
6, remainder	Black Bear	Residents of Unit 6(C) and 6(D), except no subsistence for Whittier.
6	Brown Bear	No Federal subsistence priority.
6(A)	Goat	Residents of Unit 5(A), 6(C), Chenega Bay and Tatitlek.
6(C) and (D)	Goat	Residents of Unit 6(C) and (D).
6(A)	Moose	Unit 6(A)—Residents of Units 5(A), 6(A), 6(B) and 6(C).
6(B) and (C)	Moose	Residents of Units 6(A), 6(B) and 6(C).
6(D)	Moose	No Federal subsistence priority.
6(A)	Wolf	Residents of Units 5(A), 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
6, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 7	Brown Bear	No Federal subsistence priority.
7	Caribou	No Federal subsistence priority.
7, Brown Mountain hunt area	Goat	Residents of Port Graham and English Bay.
7, that portion draining into Kings Bay	Moose	Residents of Chenega Bay and Tatitlek.
7, remainder	Moose	No Federal subsistence priority.
7	Sheep	No Federal subsistence priority.
Unit 8	Brown Bear	Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions.
8	Deer	Residents of Unit 8.
8	Elk	Residents of Unit 8.
8	Goat	No Federal subsistence priority.
Unit 9(D)	Bison	No Federal subsistence priority.
9(A) and (B)	Black Bear	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
9(A)	Brown Bear	Residents of Pedro Bay.
9(B)	Brown Bear	Residents of Unit 9(B).
9(C)	Brown Bear	Residents of Unit 9(C).
9(D)	Brown Bear	Residents of Units 9(D) and 10 (Unimak Island).
9(E)	Brown Bear	Residents of Chignik, Chignik Lagoon, Chignik Lake, Egegik, Ivanof Bay, Perryville, Pilot Point, Ugashik, and Port Heiden/Meshik.
9(A) and (B)	Caribou	Residents of Units 9(B), and 9(C) and 17.

Area	Species	Determination
9(C)	Caribou	Residents of Unit 9(B), 9(C), 17 and residents of Egegik.
9(D)	Caribou	Residents of Unit 9(D), and residents of Akutan, False Pass.
9(E)	Caribou	Residents of Units 9(B), (C), (E), 17, and residents of Nelson Lagoon and Sand Point.
9(A), (B), (C) and (E)	Moose	Residents of Unit 9(A), (B), (C) and (E).
9(D)	Moose	Residents of Cold Bay, False Pass, King Cove, Nelson Lagoon, and Sand Point.
9(B)	Sheep	Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth.
9, remainder	Sheep	No determination.
9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
9(A), (B), (C), & (E)	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 10 Unimak Island	Brown Bear	Residents of Units 9(D) and 10 (Unimak Island).
Unit 10 Unimak Island	Caribou	Residents of Akutan, False Pass, King Cove, and Sand Point.
10, remainder	Caribou	No determination.
10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 11	Bison	No Federal subsistence priority.
11, north of the Sanford River	Black Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Units 11 and 12.
11, remainder	Black Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Unit 11.
11, north of the Sanford River	Brown Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Units 11 and 12.
11, remainder	Brown Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Unit 11.
11, north of the Sanford River	Caribou	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon, Healy Lake, and Dot Lake.
11, remainder	Caribou	Residents of Units 11 and 13(A)–(D) and the residents of Chickaloon.
11	Goat	Residents of Unit 11 and the residents of Chitina, Chistochina, Copper Center, Gakona, Glennallen, Gulkana, Mentasta Lake, Tazlina, Tonsina, and Dot Lake.
11, north of the Sanford River	Moose	Residents of Units 11, 12, and 13(A)–(D) and the residents of Chickaloon, Healy Lake, and Dot Lake.
11, remainder	Moose	Residents of Units 11, 13(A)–(D), and residents of Chickaloon.
11, north of the Sanford River	Sheep	Residents of Unit 12 and the communities and areas of Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Healy Lake, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/ South Park, Tazlina and Tonsina; residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11, remainder	Sheep	Residents of the communities and areas of Chisana, Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/ South Park, Tazlina and Tonsina; residents along the Tok Cutoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
11	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
11	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 12	Brown Bear	Residents of Unit 12 and Dot Lake, Chistochina, Gakona, Mentasta Lake, and Slana.
12	Caribou	Residents of Unit 12 and residents of Dot Lake, Healy Lake, and Mentasta Lake.

Area	Species	Determination
12, south of a line from Noyes Mountain, southeast of the confluence of Tatschunda Creek to Nabesna River.	Moose	Residents of Unit 11 north of 62nd parallel (excluding North Slana Homestead and South Slana Homestead); and residents of Unit 12, 13(A)–(D) and the residents of Chickaloon, Dot Lake, and Healy Lake.
12, east of the Nabesna River and Nabesna Glacier, south of the Winter Trail from Pickerel Lake to the Canadian Border.	Moose	Residents of Unit 12 and Healy Lake.
12, remainder	Moose	Residents of Unit 12 and residents of Dot Lake, Healy Lake, and Mentasta Lake.
12	Sheep	Residents of Unit 12 and residents of Chistochina, Dot Lake, Healy Lake, and Mentasta Lake.
12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 13	Brown Bear	Residents of Unit 13.
13(B)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, residents of Unit 20(D) except Fort Greely, and the residents of Chickaloon.
13(C)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon, Dot Lake and Healy Lake.
13(A) & (D)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon.
13(E)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon, McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Goat	No Federal subsistence priority.
13(A) and (D)	Moose	Residents of Unit 13 and the residents of Chickaloon.
13(B)	Moose	Residents of Units 13, 20(D) except Fort Greely, and the residents of Chickaloon.
13(C)	Moose	Residents of Units 12, 13 and the residents of Chickaloon, Healy Lake, and Dot Lake.
13(E)	Moose	Residents of Unit 13 and the residents of Chickaloon and of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Sheep	No Federal subsistence priority.
13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
13	Grouse (Spruce, Blue, Ruffed & Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
13	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
Unit 14(B) and (C)	Brown Bear	No Federal subsistence priority.
14	Goat	No Federal subsistence priority.
14	Moose	No Federal subsistence priority.
14(A) and (C)	Sheep	No Federal subsistence priority.
Unit 15(C)	Black Bear	Residents of Port Graham and Nanwalek only.
15, remainder	Black Bear	No Federal subsistence priority.
15	Brown Bear	No Federal subsistence priority.
15(C), Port Graham and English Bay hunt areas	Goat	Residents of Port Graham and Nanwalek.
15(C), Seldovia hunt area	Goat	Residents Seldovia area.
15	Moose	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
15	Sheep	No Federal subsistence priority.
15	Ptarmigan (Rock, Willow and White-tailed).	Residents of Unit 15.
15	Grouse (Spruce)	Residents of Unit 15.
15	Grouse (Ruffed)	No Federal subsistence priority.
Unit 16(B)	Black Bear	Residents of Unit 16(B).
16	Brown Bear	No Federal subsistence priority.
16(A)	Moose	No Federal subsistence priority.
16(B)	Moose	Residents of Unit 16(B).
16	Sheep	No Federal subsistence priority.
16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
16	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
16	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 17(A) and that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake.	Black Bear	Residents of Units 9(A) and (B), 17, and residents of Akiak and Akiachak.

Area	Species	Determination
17, remainder	Black Bear	Residents of Units 9(A) and (B), and 17.
17(A)	Brown Bear	Residents of Unit 17, and residents of Akiak, Akiachak, Goodnews Bay and Platinum.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear	Residents of Kwethluk.
17(B), that portion draining into Nuyakuk Lake and Tikchik Lake.	Brown Bear	Residents of Akiak and Akiachak.
17(B) and (C)	Brown Bear	Residents of Unit 17.
17	Caribou	Residents of Units 9(B), 17 and residents of Lime Village and Stony River.
Unit 17(A, that portion west of the Izavieknik River, Upper Togiak Lake, Togiak Lake, and the main course of the Togiak River.	Caribou	Residents of Goodnews Bay, Platinum, Quinhagak, Eek, Tuntutuliak, and Napakiak.
Unit 17(A)—That portion north of Togiak Lake that includes Izavieknik River drainages.	Caribou	Residents of Akiak, Akiachak, and Tuluksak.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou	Residents of Kwethluk.
Unit 17(B), that portion of Togiak National Wildlife Refuge within Unit 17(B).	Caribou	Residents of Bethel, Goodnews Bay, Platinum, Quinhagak, Eek, Akiak, Akiachak, and Tuluksak, Tuntutuliak, and Napakiak.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Moose	Residents of Kwethluk.
17(A)	Moose	Residents of Unit 17 and residents of Goodnews Bay and Platinum; however, no subsistence for residents of Akiachak, Akiak and Quinhagak.
Unit 17(A)—That portion north of Togiak Lake that includes Izavieknik River drainages.	Moose	Residents of Akiak, Akiachak.
Unit 17(B)—That portion within the Togiak National Wildlife Refuge.	Moose	Residents of Akiak, Akiachak.
17(B) and (C)	Moose	Residents of Unit 17, and residents of Nondalton, Levelock, Goodnews Bay, and Platinum.
17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
17	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 18	Black Bear	Residents of Unit 18, residents of Unit 19(A) living downstream of the Holokuk River, and residents of Holy Cross, Stebbins, St. Michael, Twin Hills, and Togiak.
18	Brown Bear	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak.
18	Caribou (Kilbuck caribou herd only).	INTERIM DETERMINATION BY FEDERAL SUBSISTENCE BOARD (12/18/91): residents of Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmanthluak, Nunapitchuk, Tuntutuliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills.
18, north of the Yukon River	Caribou (except Kilbuck caribou herd).	Residents of Alakanuk, Andreafsky, Chevak, Emmonak, Hooper Bay, Kotlik, Kwethluk, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Marys, St. Michael, Scammon Bay, Sheldon Point, and Stebbins.
18, remainder	Caribou (except Kilbuck caribou herd).	Residents of Kwethluk.
18, that portion of the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including the Tuluksak River drainage.	Moose	Residents of Unit 18 and residents of Upper Kalskag, Lower Kalskag, Aniak, and Chuathbaluk.
18, remainder	Moose	Residents of Unit 18 and residents of Upper Kalskag and Lower Kalskag.
18	Muskox	No Federal subsistence priority.

Area	Species	Determination
18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 19(C) (D)	Bison	No Federal subsistence priority.
19(A) and (B)	Brown Bear	Residents of Units 19 and 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River.
19(C)	Brown Bear	No Federal subsistence priority.
19(D)	Brown Bear	Residents of Units 19(A) and (D), and residents of Tulusak and Lower Kalskag.
19(A) and (B)	Caribou	Residents of Units 19(A) and 19(B), residents of Unit 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River, and residents of St. Marys, Marshall, Pilot Station, Russian Mission.
19(C)	Caribou	Residents of Unit 19(C), and residents of Lime Village, McGrath, Nikolai, and Telida.
19(D)	Caribou	Residents of Unit 19(D), and residents of Lime Village, Sleetmute, and Stony River.
19(A) and (B)	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and Unit 19.
Unit 19(B), west of the Kogrukluk River	Moose	Residents of Eek and Quinhagak.
19(C)	Moose	Residents of Unit 19.
19(D)	Moose	Residents of Unit 19 and residents of Lake Minchumina.
19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 20(D)	Bison	No Federal subsistence priority.
20(F)	Black Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(E)	Brown Bear	Residents of Unit 12 and Dot Lake.
20(F)	Brown Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(A)	Caribou	Residents of Cantwell, Nenana, and those domiciled between milepost 216 and 239 of the Parks Highway. No subsistence priority for residents of households of the Denali National Park Headquarters.
20(B)	Caribou	Residents of Unit 20(B), Nenana, and Tanana.
20(C)	Caribou	Residents of Unit 20(C) living east of the Teklanika River, residents of Cantwell, Lake Minchumina, Manley Hot Springs, Minto, Nenena, Nikolai, Tanana, Talida, and those domiciled between milepost 216 and 239 of the Parks Highway and between milepost 300 and 309. No subsistence priority for residents of households of the Denali National Park Headquarters.
20(D) and (E)	Caribou	Residents of 20(D), 20(E), and Unit 12 north of the Wrangell-St. Elias National Park and Preserve.
20(F)	Caribou	Residents of 20(F), 25(D), and Manley.
20(A)	Moose	Residents of Cantwell, Minto, and Nenana, McKinley Village, the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.
20(B)	Moose	Minto Flats Management Area—residents of Minto and Nenana.
20(B)	Moose	Remainder—residents of Unit 20(B), and residents of Nenana and Tanana.
20(C)	Moose	Residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters.
20(D)	Moose	Residents of Unit 20(D) and residents of Tanacross.
20(F)	Moose	Residents of Unit 20(F), Manley, Minto, and Stevens Village.
20(F)	Wolf	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.

Area	Species	Determination
20(D)	Grouse, (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
20(D)	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 21	Brown Bear	Residents of Units 21 and 23.
21(A)	Caribou	Residents of Units 21(A), 21(D), 21(E), Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
21(B) & (C)	Caribou	Residents of Units 21(B), 21(C), 21(D), and Tanana.
21(D)	Caribou	Residents of Units 21(B), 21(C), 21(D), and Huslia.
21(E)	Caribou	Residents of Units 21(A), 21(E) and Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
21(A)	Moose	Residents of Units 21(A), (E), Takotna, McGrath, Aniak, and Crooked Creek.
21(B) and (C)	Moose	Residents of Units 21(B) and (C), Tanana, Ruby, and Galena.
21(D)	Moose	Residents of Units 21(D), Huslia, and Ruby.
21(E)	Moose	Residents of Unit 21(E) and residents of Russian Mission.
21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 22(A)	Black Bear	Residents of Unit 22(A) and Koyuk.
22(B)	Black Bear	Residents of Unit 22(B).
22(C), (D), and (E)	Black Bear	No Federal subsistence priority.
22	Brown Bear	Residents of Unit 22.
22(A)	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24 and residents of Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Marys, Sheldon Point, and Alakanuk.
22, remainder	Caribou	Reidents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24.
22	Moose	Residents of Unit 22.
22(B)	Muskox	Residents of Unit 22(B).
22(C)	Muskox	Residents of Unit 22(C).
22(D)	Muskox	Residents of Unit 22(D) excluding St. Lawrence Island.
22(E)	Muskox	Residents of Unit 22(E) excluding Little Diomede Island.
22	Wolf	Residents of Units 23, 22, 21(D) north and west of the Yukon River, and residents of Kotlik.
22	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
22	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 23	Black Bear	Residents of Unit 23, Alatna, Allakaket, Bettles, Evansville, Galena, Hughes, Huslia, and Koyukuk.
23	Brown Bear	Residents of Units 21 and 23.
23	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, residents of Galena, and residents of Units 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26(A).
23	Moose	Residents of Unit 23.
23, south of Kotzebue Sound and west of and including the Buckland River drainage.	Muskox	Residents of Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage.
23, remainder	Muskox	Residents of Unit 23 east and north of the Buckland River drainage.
23	Sheep	Residents of Point Lay and Unit 23 north of the Arctic Circle.
23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26
23	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
23	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Black Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Black Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.

Area	Species	Determination
24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Brown Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but no including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Brown Bear	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24	Caribou	Residents of Unit 24, Galena, Kobuk, Koyukuk, Stevens Village, and Tanana.
24	Moose	Residents of Unit 24, Koyukuk, and Galena.
24	Sheep	Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna, Hughes, and Huslia.
24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 25(D)	Black Bear	Residents of Unit 25(D).
25(D)	Brown Bear	Residents of Unit 25(D).
25, remainder	Brown Bear	No Federal subsistence priority.
25(D)	Caribou	Residents of 20(F), 25(D), and Manley.
25(A)	Moose	Residents of Units 25(A) and 25(D).
25(D) West	Moose	Residents of Beaver, Birch Creek, and Stevens Village.
25(D), remainder	Moose	Residents of Remainder of Unit 25.
25(A)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik, and Venetie.
25(B) and (C)	Sheep	No Federal subsistence priority.
25(D)	Wolf	Residents of Unit 25(D).
25, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.
26(A)	Caribou	Residents of Unit 26, Anaktuvuk Pass and Point Hope.
26(B)	Caribou	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Caribou	Residents of Unit 26, Anaktuvuk Pass and Point Hope.
26	Moose	Residents of Unit 26, (except the Prudhoe Bay-Deadhorse Industrial Complex), and residents of Point Hope and Anaktuvuk Pass.
26(A)	Muskox	Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
26(B)	Muskox	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
26(C)	Muskox	Residents of Kaktovik.
26(A)	Sheep	Residents of Unit 26, Anaktuvuk Pass, and Point Hope.
26(B)	Sheep	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Sheep	Residents of Unit 26, Anaktuvuk Pass, Arctic Village, Chalkytsik, Fort Yukon, Point Hope, and Venetie.
26	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.

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Subpart D—Subsistence Taking of Fish and Wildlife

3. We propose to revise Subpart D of 36 CFR part 242 and 50 CFR part 100, § .25 effective July 1, 2001, through June 30, 2002, to read as follows:

§ .25 Subsistence taking of wildlife.

(a) Definitions. The following definitions shall apply to all regulations contained in this section:

ADF&G means the Alaska Department of Fish and Game.

Aircraft means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Antler means one or more solid, horn-like appendages protruding from the head of a caribou, deer, elk, or moose.

Antlered means any caribou, deer, elk, or moose having at least one visible antler.

Antlerless means any caribou, deer, elk, or moose not having visible antlers attached to the skull.

Bear means black bear, or brown or grizzly bear.

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow, or any bow equipped with a mechanical device that holds arrows at full draw.

Broadhead means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Buck means any male deer.

Bull means any male moose, caribou, elk, or musk oxen.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Designated hunter means a Federally qualified, licensed hunter who may take all or a portion of another Federally qualified, licensed hunter's harvest limit(s) only under situations approved by the Board.

Edible meat means the breast meat of ptarmigan and grouse, and, those parts of caribou, deer, elk, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption, which are: The meat of the ribs, neck, brisket, front quarters as far as the distal (bottom) joint of the radius-ulna (knee), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, *edible meat* of species listed above does not include: Meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera. For black bear, brown and grizzly bear, ''edible meat'' means the meat of the front quarter and hindquarters and meat along the backbone (backstrap).

Federally-qualified subsistence user means a rural Alaska resident qualified to harvest fish or wildlife on Federal public lands in accordance with the Federal Subsistence Management Regulations in this part.

Fifty-inch (50-inch) moose means a bull moose with an antler spread of 50 inches or more.

Full curl horn means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf, or wolverine.

Grouse collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse, and sharp-tailed grouse.

Hare or hares collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

Harvest limit means the number of any one species permitted to be taken by any one person in a Unit or portion of a Unit in which the taking occurs.

Highway means the driveable surface of any constructed road.

Household means that group of people residing in the same residence.

Hunting means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

Marmot collectively refers to all species of marmot that occur in Alaska including the hoary marmot, Alaska marmot, and the woodchuck.

Motorized vehicle means a motor-driven land, air, or water conveyance.

Open season means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

Otter means river or land otter only, excluding sea otter.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance that is toxic or poisonous upon contact or ingestion.

Possession means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

Ptarmigan collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

Ram means a male Dall sheep.

Registration permit means a permit that authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order applications are received and/or are based on priorities as determined by 50 CFR 100.17 and 36 CFR 242.17.

Sealing means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; *sealing* includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a male Dall sheep, the tip of which has grown through seven-eights (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide, pelt, or fur means any tanned or untanned external covering of an animal's body; excluding bear. The skin, hide, fur, or pelt of a bear shall mean the entire external covering with claws attached.

Spike-fork moose means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

Take or *Taking* means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Tine or *antler point* refers to any point on an antler, the length of which is greater than its width and is at least one inch.

Transportation means to ship, convey, carry, or transport by any means whatever and deliver or receive for such shipment, conveyance, carriage, or transportation.

Trapping means the taking of furbearers within established trapping seasons and with a required trapping license.

Unclassified wildlife or unclassified species means all species of animals not otherwise classified by the definitions in this paragraph (a), or regulated under other Federal law as listed in paragraph (i) of this section.

Ungulate means any species of hoofed mammal, including deer, caribou, elk, moose, mountain goat, Dall sheep, and musk oxen.

Unit means one of the 26 geographical areas in the State of Alaska known as Game Management Units, or GMU, and collectively listed in this section as Units.

Wildlife means any hare (rabbit), ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Hunters may take wildlife for subsistence uses by any method, except as prohibited in this section or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this part. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by this part is prohibited.

(1) Except for special provisions found at paragraphs (k)(1) through (26) of this section, the following methods and means of taking wildlife for subsistence uses are prohibited:

(i) Shooting from, on, or across a highway;

(ii) Using any poison;

(iii) Using a helicopter in any manner, including transportation of individuals, equipment, or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life-threatening situation;

(iv) Taking wildlife from a motorized land or air vehicle, when that vehicle is in motion or from a motor-driven boat when the boat's progress from the motor's power has not ceased;

(v) Using a motorized vehicle to drive, herd, or molest wildlife;

(vi) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves or wolverine, except that—

(A) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine;

(B) Only a muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, elk, moose, musk oxen and mountain goat;

(viii) Using or being aided by use of a pit, fire, artificial light, radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, conventional steel trap with a jaw spread over nine inches, or conibear style trap with a jaw spread over 11 inches;

(ix) Using a snare, except that an individual in possession of a valid hunting license may use nets and snares to take unclassified wildlife, ptarmigan, grouse, or hares; and, individuals in possession of a valid trapping license may use snares to take furbearers;

(x) Using a trap to take ungulates or bear;

(xi) Using hooks to physically snag, impale, or otherwise take wildlife; however, hooks may be used as a trap drag;

(xii) Using a crossbow to take ungulates, bear, wolf, or wolverine in any area restricted to hunting by bow and arrow only;

(xiii) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting a 7/8-inch wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least one ounce (437.5 grains);

(xiv) Using bait for taking ungulates, bear, wolf, or wolverine; except, you may use bait to take wolves and wolverine with a trapping license, and, you may use bait to take black bears with a hunting license as authorized in Unit-specific regulations at paragraphs (k)(1) through (26) of this section. Baiting of black bears is subject to the following restrictions:

(A) Before establishing a black bear bait station, you must register the site with ADF&G;

(B) When using bait you must clearly mark the site with a sign reading ''black bear bait station'' that also displays your hunting license number and ADF&G assigned number;

(C) You may use only biodegradable materials for bait; you may use only the head, bones, viscera, or skin of legally harvested fish and wildlife for bait;

(D) You may not use bait within one-quarter mile of a publicly maintained road or trail;

(E) You may not use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground, or developed recreational facility;

(F) When using bait, you must remove litter and equipment from the bait station site when done hunting;

(G) You may not give or receive payment for the use of a bait station, including barter or exchange of goods;

(H) You may not have more than two bait stations with bait present at any one time;

(xv) Taking swimming ungulates, bears, wolves or wolverine;

(xvi) Taking or assisting in the taking of ungulates, bear, wolves, wolverine, or other furbearers before 3:00 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft); however, this restriction does not apply to subsistence taking of deer;

(xvii) Taking a bear cub or a sow accompanied by cub(s).

(2) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(3) The following methods and means of trapping furbearers, for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at paragraph (b)(1) of this section:

(i) Disturbing or destroying a den, except that you may disturb a muskrat pushup or feeding house in the course of trapping;

(ii) Disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that you may use firearms in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(iv) Taking otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same Unit;

(v) Using a net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation, or by landing within one mile of a beaver trap or set used by the transported person;

(vii) Taking or assisting in the taking of furbearers by firearm before 3:00 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare.

(c) Possession and transportation of wildlife. (1) Except as specified in paragraph (c)(3)(ii) or (c)(4) of this section, or as otherwise provided, you may not take a species of wildlife in any Unit, or portion of a Unit, if your total take of that species already obtained anywhere in the State under Federal and State regulations equals or exceeds the harvest limit in that Unit.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to § .6(f)(3) or as otherwise provided for by this part, an animal taken as part of a community harvest limit counts toward every community member's harvest limit for that species taken under Federal or State of Alaska regulations.

(3) Harvest limits. (i) Harvest limits, including those related to ceremonial uses, authorized by this section and harvest limits established in State regulations may not be accumulated.

(ii) Wildlife taken by a designated hunter for another person pursuant to § .6(f)(2), counts toward the individual harvest limit of the person for whom the wildlife is taken.

(4) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that if you have taken a harvest limit for a particular species under a trapping season, you may take additional animals under the harvest limit specified for a hunting season or vice versa.

(5) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of one brown/grizzly bear per year counts against a one brown/grizzly bear every four regulatory years harvest limit in other Units; an individual may not take more than one brown/grizzly bear in a regulatory year.

(6) A harvest limit applies to the number of animals that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day.

Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(7) Unless otherwise provided, any person who gives or receives wildlife shall furnish, upon a request made by a Federal or State agent, a signed statement describing the following: names and addresses of persons who gave and received wildlife, the time and place that the wildlife was taken, and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take wildlife on his or her behalf in accordance with § .6, the permit shall be furnished in place of a signed statement.

(8) A rural Alaska resident who has been designated to take wildlife on behalf of another rural Alaska resident in accordance with § .6, shall promptly deliver the wildlife to that rural Alaska resident.

(9) You may not possess, transport, give, receive, or barter wildlife that was taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(10) Evidence of sex and identity. (i) If subsistence take of Dall sheep is restricted to a ram, you may not possess or transport a harvested sheep unless both horns accompany the animal.

(ii) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, you may not possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal, except in Units 11 and 13 where you may possess either sufficient portions of the external sex organs (still attached to a portion of the carcass) or the head (with or without antlers attached; however, the antler stumps must remain attached), to indicate the sex of the harvested moose; however, this paragraph (c)(10)(ii) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose harvest limit includes an antler size or configuration restriction, you may not possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. If you possess a set of antlers with less than the required number of brow tines on one antler, you must leave the antlers naturally attached to the unbroken, uncut skull plate; however, this paragraph (c)(10)(iii) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(11) You must leave all edible meat from caribou and moose harvested in Units 9(B), 17, and 19(B) prior to October 1 on the bones of the front quarters and hind quarters until you remove the meat from the field or process it for human consumption.

(d) If you take an animal that has been marked or tagged for scientific studies, you must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker, when and where the animal was taken. You also must retain any ear tag, collar, radio, tattoo, or other identification with the hide until it is sealed, if sealing is required; in all cases, you must return any identification equipment to the ADF&G or to an agency identified on such equipment.

(e) Sealing of bear skins and skulls. (1) Sealing requirements for bear shall apply to brown bears taken in all Units, except as specified in this paragraph, and black bears of all color phases taken in Units 1–7, 11–17, and 20.

(2) You may not possess or transport from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) need not be sealed unless removed from the area.

(3) You must keep a bear skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision shall not apply to brown bears taken within the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) which are not removed from the Management Area or Unit.

(i) In areas where sealing is required by Federal regulations, you may not possess or transport the hide of a bear which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in the Western Alaska Brown Bear Management Area is removed from the area, you must first have it sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iii) If you remove the skin or skull of a bear taken in the Northwestern Alaska Brown Bear Management Area from the area or present it for commercial tanning within the Management Area, you must first have it sealed by an ADF&G representative in Barrow, Fairbanks, Galena, Nome, or Kotzebue; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iv) If you remove the skin or skull of a bear taken in Unit 5 from the area, you must first have it sealed by an ADF&G representative in Yakutat; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(4) You may not falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(f) Sealing of beaver, lynx, marten, otter, wolf, and wolverine. You may not possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13(E), and 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the State, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State regulations. In Unit 18, you must obtain an ADF&G seal for beaver skins only if they are to be sold or commercially sold.

(1) You must seal any wolf taken in Unit 2 on or before the 30th day after the date of taking.

(2) You must leave the radius and ulna of the left foreleg naturally attached to the hide of any wolf taken in Units 1–5 until the hide is sealed.

(g) A person who takes a species listed in paragraph (f) of this section but who is unable to present the skin in person, must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in paragraph (f) of this section.

(h) Utilization of wildlife. (1) You may not use wildlife as food for a dog or furbearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse, and ptarmigan; however, you may not use the breast meat of grouse and ptarmigan as animal food or bait;

(iv) Unclassified wildlife.

(2) If you take wildlife for subsistence, you must salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel, or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in the Western and Northwestern Alaska Brown Bear Management Areas and Units 5 and 9(B) need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares (rabbits), marmots, beaver, muskrats, or unclassified wildlife.

(3) You must salvage the edible meat of ungulates, bear, grouse and ptarmigan.

(4) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested wildlife, unanticipated weather conditions, or unavoidable loss to another animal.

(i) The regulations found in this section do not apply to the subsistence taking and use of wildlife regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 1091, 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or any amendments to these Acts. The taking and use of wildlife, covered by these Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(j) Rural residents, nonrural residents, and nonresidents not specifically prohibited by Federal regulations from hunting or trapping on public lands in an area, may hunt or trap on public lands in accordance with the appropriate State regulations.

(k) Unit regulations. You may take for subsistence unclassified wildlife, all squirrel species, and marmots in all Units, without harvest limits, for the period of July 1–June 30. You may not take for subsistence wildlife outside established Unit seasons, or in excess of the established Unit harvest limits, unless otherwise provided for by the Board. You may take wildlife under State regulations on public lands, except as otherwise restricted at paragraphs (k)(1) through (26) of this section. Additional Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at paragraphs (k)(1) through (26) of this section.

(1) *Unit 1.* Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound, and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses;

(B) Unit 1(A)—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1(B)—the Anan Creek drainage within one mile of Anan Creek downstream from the mouth of Anan Lake, including the area within a one mile radius from the mouth of Anan Creek Lagoon, is closed to the taking of black bear and brown bear;

(D) Unit 1(C):

(*1*) You may not hunt within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area;

(*2*) You may not take mountain goat in the area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier;

(vi) You may not trap furbearers for subsistence uses in Unit 1(C), Juneau area, on the following public lands:

(A) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(C) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(D) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail;

(vii) Unit-specific regulations:

(A) You may hunt black bear with bait in Units 1(A), 1(B), and 1(D) between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, unless you are certified as disabled;

(C) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear: 1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 31.
Deer:	
Unit 1(A)—4 antlered deer	Aug. 1–Dec. 31.
Unit 1(B)—2 antlered deer	Aug. 1–Dec. 31.
Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31	Aug. 1–Dec. 31.
Goat:	
Unit 1(A)—Revillagigedo Island only	No open season.
Unit 1(B)—that portion north of LeConte Bay. 1 goat by State registration permit only; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(B)—that portion between LeConte Bay and the North Fork of Bradfield River/Canal. 2 goats; a State registration permit will be required for the taking of the first goat and a Federal registration permit for the taking of a second goat; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(A) and Unit 1(B)—remainder—2 goats by State registration permit only	Aug. 1–Dec. 31.
Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River, and all drainages of the Chilkat Range south of the Endicott River—1 goat by State registration permit only.	Oct. 1–Nov. 30.
Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier.	No open season.
Unit 1(C)—remainder—1 goat by State registration permit only	Aug. 1–Nov. 30.
Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15–Nov. 30.
Unit 1(D)—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad	No open season.
Unit 1(D)—remainder—1 goat by State registration permit only	Aug. 1–Dec. 31.
Moose:	
Unit 1(A)—1 antlered bull	Sept. 15–Oct. 15.
Unit 1(B)—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only.	Sept. 15–Oct. 15.
Unit 1(C)—that portion south of Point Hobart including all Port Houghton drainages—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only.	Sept. 15–Oct. 15.
Unit 1(C)—remainder, excluding drainages of Berners Bay—1 antlered bull by State registration permit only	Sept. 15–Oct. 15.
Unit 1(D)	No open season.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
TRAPPING	
Beaver: Unit 1(A), (B), and (C)—No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(2) *Unit 2.* Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the western most point on Warren Island.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, unless you are certified as disabled;

(C) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

Harvest limits	Open season
HUNTING	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer:	
4 deer; however, no more than one may be an antlerless deer..	
Antlerless deer may be taken only during the period Oct. 15–Dec. 31 by Federal registration permit only.	Aug. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Dec. 1–Mar. 31.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
TRAPPING	
Beaver: No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit.	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Dec. 1–Mar. 31.
Wolverine: No limit	Nov. 10–Apr. 30.

(3) *Unit 3.* (i) Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, you may not take ungulates, bear, wolves, and wolverine along a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground;

(B) You may not take black bears in the Petersburg Creek drainage on Kupreanof Island;

(C) You may not hunt in the Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, unless you are certified as disabled;

(C) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest

system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer:	
Unit 3—Mitkof Island, Woewodski Island, Butterworth Islands, and that portion of Kupreanof Island which includes Lindenburg Peninsula east of the Portage Bay/Duncan Canal Portage—1 antlered deer by State registration permit only; however, the city limits of Petersburg and Kupreanof are closed to hunting.	Oct. 15–Oct. 31.
Unit 3—remainder—2 antlered deer	Aug. 1–Nov. 30.
Moose: 1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler by State registration permit only.	Sept. 15–Oct. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
TRAPPING	
Beaver:	
Unit 3—Mitkof Island—No limit	Dec. 1–Apr. 15.
Unit 3—except Mitkof Island—No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(4) *Unit 4.* (i) Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take bears in the Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands;

(B) You may not take bears in the Salt Lake Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay;

(C) You may not take brown bears in the Port Althorp Closed Area (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock);

(D) You may not use any motorized land vehicle for brown bear hunting in the Northeast Chichagof Controlled Use Area (NECCUA) consisting of all portions of Unit 4 on Chichagof Island north of Tenakee Inlet and east of the drainage divide from the northwest point of Gull Cove to Port Frederick Portage, including all drainages into Port Frederick and Mud Bay;

(E) You may not use any motorized land vehicle for the taking of marten, mink, and weasel on Chichagof Island.

(iii) Unit-specific regulations:

(A) You may take ungulates from a boat. You may not use a boat to take bear, wolves, or wolverine, unless you are certified as disabled;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(C) You may take of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) Five Federal registration permits will be issued for the taking of brown bear for educational purposes associated with teaching customary and traditional

subsistence harvest and use practices. Any bear taken under an educational permit would count in an individual's one bear every four regulatory years limit.

Harvest limits	Open season
HUNTING	
Brown Bear:	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136° 21′ W. long.) to Rodgers Point (57° 35′ N. lat., 135° 33′ W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57° 34′ N. lat., 135° 25′ W. long.) to the entrance of Gut Bay (56° 44′ N. lat. 134° 38′ W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31. Mar. 15–May 31.
Unit 4—that portion in the Northeast Chichagof Controlled Use Area—1 bear every four regulatory years by State registration permit only.	Mar. 15–May 20.
Unit 4—remainder—1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 20.
Deer: 6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31	Aug. 1–Jan. 31.
Goat: 1 goat by State registration permit only	Aug. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1.–May 15.
TRAPPING	
Beaver:	
Unit 4—that portion east of Chatham Strait—No limit.	Dec. 1–May 15.
Remainder of Unit 4	No open season.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten:	
Unit 4—Chichagof Island east of Idaho Inlet and north of Trail River and Tenakee Inlet and north of a line from the headwaters of Trail River to the head of Tenakee Inlet.—No limit.	Dec. 1–Dec. 31.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
Unit 4—Chichagof Island—No limit	Dec. 1–Dec. 31.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(5) *Unit 5.* (i) Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills:

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5.

(ii) You may not take wildlife for subsistence uses on public lands within Glacier Bay National Park.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C) You may hunt brown bear in Unit 5 with a Federal registration permit in lieu of a State metal locking tag; if you have obtained a Federal registration permit prior to hunting;

(D) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(E) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer or moose on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a

designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear: 1 bear by Federal registration permit only	Sept. 1–May 31.
Deer:	
Unit 5(A)—1 buck	Nov. 1–Nov. 30.
Unit 5(B)	No open season.
Goat: 1 goat by Federal registration permit only	Aug. 1–Jan. 31.
Moose:	
Unit 5(A), Nunatak Bench—1 moose by State registration permit only. The season will be closed when 5 moose have been taken from the Nunatak Bench.	Nov. 15–Feb. 15.
Unit 5(A), except Nunatak Bench—1 antlered bull by Federal registration permit only. The season will be closed when 60 antlered bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 antlered bulls have been taken in that area. From Oct. 8–Oct. 21, public lands will be closed to taking of moose, except by residents of Unit 5(A).	Oct. 8–Nov. 15.
Unit 5(B)—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5(B).	Sept. 1–Dec. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
TRAPPING	
Beaver: No limit	Nov. 10–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Feb. 15.
Mink and Weasel: No limit	Nov. 10–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Nov. 10–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(6) *Unit 6.* (i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages:

(A) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6(D) consists of the remainder of Unit 6.

(ii) For the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take mountain goat in the Goat Mountain goat observation area, which consists of that portion of Unit 6(B) bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River;

(B) You may not take mountain goat in the Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may take coyotes in Units 6(B) and 6(C) with the aid of artificial lights;

(C) One permit will be issued to the Native Village of Eyak to take one bull moose from Federal lands in Units 6(B) or (C) for their annual Memorial/Sobriety Day potlatch.

Harvest limits	Open season
HUNTING	
Black Bear: 1 bear	Sept. 1–June 30.
Deer: 4 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31	Aug. 1–Dec. 31.
Goats:	
Unit 6(A), (B)—1 goat by State registration permit only	Aug. 20–Jan. 31.
Unit 6(C)	No open season.

Harvest limits	Open season
Unit 6(D) (subareas RG242, RG243, RG244, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only.	Aug. 20–Jan. 31.
In each of the Unit 6(D) subareas, goat seasons will be closed when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG243—4 goats, RG244—2 goats, RG249—4 goats, RG266—4 goats, RG252—1 goat.	
Unit 6(D) (subarea RG245)—The taking of goats is prohibited on all public lands	No open season.
Moose:	
Unit 6(C)—1 cow by Federal registration permit only. (Five permits will be issued.)	Aug. 15–Dec. 31.
Unit 6—remainder—No Federal open season	
Beaver: 1 beaver per day, 1 in possession	May 1–Oct. 31.
Coyote:	
Unit 6(A) and (D)—2 coyotes	Sept. 1–Apr. 30.
Unit 6(B)—No limit	July 1–June 30.
Unit 6(C)—south of the Copper River Highway and east of the Heney Range—No limit	July 1–June 30.
Unit 6(C)—remainder—No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases)	No open season.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx	No open season.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
TRAPPING	
Beaver: No limit	Dec. 1–Apr. 30.
Coyote:	
Unit 6(A), (B), and (D)—No limit	Nov. 10–Mar. 31.
Unit 6(C)—south of the Copper River Highway and east of the Heney Range—No limit	Nov. 10–Apr. 30.
Unit 6(C)—remainder—No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(7) *Unit 7.* (i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Kenai Fjords National Park;

(B) You may not hunt in the Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek, and Byron Glacier; however, you may hunt grouse, ptarmigan, hares, and squirrels with shotguns after September 1.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15; except in the drainages of Resurrection Creek and its tributaries.

(B) [Reserved]

Harvest limits	Open season
HUNTING	
Black Bear: Unit 7—3 bears	July 1–June 30.
Moose:	
Unit 7—that portion draining into Kings Bay—1 bull with spikefork or 50-inch antlers or 3 or more brow tines on either antler may be taken by the community of Chenega Bay and also by the community of Tatitlek. Public lands are closed to the taking of moose except by eligible rural residents.	Aug. 10–Sept. 20.
Unit 7—remainder	No open season.
Beaver: 1 beaver per day, 1 in possession	May 1–Oct. 10.
Coyote: No Limit	Sept 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes.	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Wolf:	
Unit 7—that portion within the Kenai National Wildlife Refuge—2 wolves	Aug. 10–Apr. 30.
Unit 7—Remainder—5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.

Harvest limits	Open season
TRAPPING	
Beaver: 20 beaver per season	Nov. 10–Mar. 31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–May 15.
Otter: No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28

(8) *Unit 8.* Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

(i) If you have a trapping license, you may take beaver with a firearm in Unit 8 from Nov. 10–Apr. 30.

(ii) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Brown Bear: 1 bear by Federal registration permit only. Up to 1 permit may be issued in Akiok; up to 1 permit may be issued in Karluk; up to 3 permits may be issued in Larsen Bay; up to 2 permits may be issued in Old Harbor; up to 2 permits may be issued in Ouzinkie; and up to 2 permits may be issued in Port Lions.	Dec. 1–Dec. 15. Apr. 1–May 15.
Deer:	
Unit 8—that portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57° 52′ N. lat., 152° 58′ W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to the mouth at Elbow Creek, and adjacent small islands in Chiniak Bay—1 deer; however, antlerless deer may be taken only from Oct. 25–Oct. 31.	Aug. 1–Oct. 31.
Unit 8—that portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of the south-western most arm of Ugak Bay—5 deer; however, antlerless deer may be taken only from Oct. 1–Jan. 31.	Aug. 1–Jan. 31.
Unit 8—remainder—5 deer; however, antlerless deer may be taken only from Oct. 1–Jan. 31; no more than 1 antlerless deer may be taken from Oct. 1–Nov. 30.	Aug. 1–Jan. 31.
Elk: Afognak Island above mean high tide—1 elk per household by Federal registration permit only; only 1 elk in possession for each two hunters in a party. The season will be closed by announcement of the Refuge Manager, Kodiak National Wildlife Refuge when the combined Federal/State harvest reaches 15% of the herd.	Sept. 1–Nov. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Jan. 31.

(9) *Unit 9.* (i) Unit 9 consists of the Alaska Peninsula and adjacent islands including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9(B) consists of the Kvichak River drainage;

(C) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9(E) consists of the remainder of Unit 9.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in Katmai National Park;

(B) You may not use motorized vehicles, except aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts from Aug. 1–Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9(C) within the

Naknek River drainage upstream from and including the King Salmon Creek drainage; however, you may use a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 9(B) from April 1–May 31 and in the remainder of Unit 9 from April 1–April 30;

(B) In Unit 9(B), Lake Clark National Park and Preserve, residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth, may hunt brown bear by Federal registration permit in lieu of a resident tag; ten permits will be available with at least one permit issued in each community but no more than five permits will be issued in a single community; the season will be closed when four females or ten bears have been taken, whichever occurs first;

(C) Residents of Newhalen, Nondalton, Iliamna, Pedro Bay, and Port Alsworth may take up to a total of 10 bull moose in Unit 9(B) for ceremonial purposes, under the terms of a Federal registration permit from July 1 through June 30. Permits will be issued to individuals only at the request of a local organization. This 10 moose limit is not cumulative with that permitted for potlatches by the State;

(D) For Units 9(C) and (E) only, a Federally-qualified subsistence user (recipient) of Units 9(C) and (E) may designate another Federally-qualified subsistence user of Units 9(C) and (E) to take bull caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report and turn over all meat to the recipient. There is no restriction on the number of possession limits the designated hunter may have in his/her possession at any one time;

(E) For Unit 9(D), a Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than four harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 9(B)—Lake Clark National Park and Preserve—Rural residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth only—1 bear by Federal registration permit only.	July 1–June 30.
Unit 9(B), remainder—1 bear by State registration permit only	Sept. 1–May 31.
Unit 9(E)—1 bear by Federal registration permit	Oct. 1–Dec. 31. May 10–May 25.
Caribou:	
Unit 9(A)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30.	Aug. 10–Mar. 31.
Unit 9(C), that portion within the Alagnak River drainage—1 caribou	Aug. 1–Mar. 31.
Unit 9(C), remainder—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of caribou except by residents of Units 9(C) and (E).	Aug. 10–Sept. 20. Nov. 15–Feb. 28.
Unit 9(B)—5 caribou; however, no more than 2 bulls may be taken from Oct. 1–Nov. 30.	Aug. 1–Apr. 15.
Unit 9(D)—1 caribou by Federal registration permit	Aug. 1–Sept. 25. Nov. 15–Mar. 31.
Unit 9(E)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of caribou except by residents of Units 9(C) and (E).	>Aug. 10–Sept. 20. Nov. 1–Apr. 30.
Sheep:	
Unit 9(B)—Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth only—1 ram with 7/8 curl horn by Federal registration permit only.	Aug. 10–Oct. 10.
Remainder of Unit 9—1 ram with 7/8 curl horn	Aug. 10–Sept. 20.
Moose:	
Unit 9(A)—1 bull	Sept. 1–Sept. 15.
Unit 9(B)—1 bull	Aug. 20–Sept. 15. Dec. 1–Jan. 15.
Unit 9(C)—that portion draining into the Naknek River from the north—1 bull	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the south—1 bull. However, during the period Aug. 20—Aug. 31, bull moose may be taken by Federal registration permit only. During the December hunt, antlerless moose may be taken by Federal registration permit only. The antlerless season will be closed when 5 antlerless moose have been taken. Public lands are closed during December for the hunting of moose, except by eligible rural Alaska residents.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—remainder—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(E)—1 bull	Aug. 20–Sept. 20. Dec. 1–Jan. 20.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White): No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.

Harvest limits	Open season
TRAPPING	
Beaver:	
Unit 9(B), (C), and (E)—40 beaver per season; however, no more than 20 may be taken between Apr. 1–May 31	Nov. 10–May 31.
Unit 9—remainder—40 beaver per season; however, no more than 20 may be taken between Apr. 1–Apr. 30	Jan. 1–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White): No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Nov. 10–Feb. 28.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(10) *Unit 10.* (i) Unit 10 consists of the Aleutian Islands, Unimak Island, and the Pribilof Islands.

(ii) You may not take any wildlife species for subsistence uses on Otter Island in the Pribilof Islands.

(iii) In Unit 10—Unimak Island only, a Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than four harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Caribou:	
Unit 10—Unimak Island only—2 caribou by Federal registration permit only	Aug. 1–Sept. 25. Nov. 15–Mar. 31.
Unit 10—remainder—No limit	July 1–June 30.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30
Wolf: 5 wolves	Aug. 10–Apr. 30
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(11) *Unit 11.* Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 11—1 bear	Sept. 1–May 31.
Caribou: Unit 11	No open season.
Sheep:	
1 sheep	Aug. 10–Sept. 20.
1 sheep by Federal registration permit only by persons 60 years of age or older	Sept. 21–Oct. 20.

Harvest limits	Open season
Goat: Unit 11—that portion within the Wrangell-St. Elias National Park and Preserve—1 goat by Federal registration permit only. Federal public lands will be closed to the harvest of goats when a total of 45 goats have been harvested between Federal and State hunts.	Aug. 25–Dec. 31.
Moose: 1 antlered bull by Federal registration permit only	Aug. 20–Sept. 20.
Beaver: 1 beaver per day, 1 in possession	June 1–Oct. 10.
Coyote: 10 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Jan. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
TRAPPING	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Jan. 31.

(12) *Unit 12.* Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may not use a steel trap, or a snare using cable smaller than 3/32 inch diameter to trap wolves in Unit 12 during April and October;

(C) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear	Aug. 10–June 30.
Caribou:	
Unit 12—that portion of the Nabesna River drainage within the Wrangell-St. Elias National Park and Preserve and all Federal lands south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—The taking of caribou is prohibited on Federal public lands.	No open season.
Unit 12—remainder—1 bull	Sept. 1–Sept. 20.
Unit 12—remainder—1 caribou may be taken by a Federal registration permit during a winter season to be announced. Dates for a winter season to occur between Oct. 1 and Apr. 30 and sex of animal to be taken will be announced by Tetlin National Wildlife Refuge Manager in consultation with Wrangell-St. Elias National Park and Preserve Superintendent, Alaska Department of Fish and Game area biologists, and Chairs of the Eastern Interior Regional Advisory Council and Upper Tanana/Fortymile Fish and Game Advisory Committee.	Winter season to be announced.
Sheep: 1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 12—that portion within the Tetlin National Wildlife Refuge and those lands within the Wrangell-St. Elias National Preserve north and east of a line formed by the Pickerel Lake Winter Trail from the Canadian border to the southern boundary of the Tetlin National Wildlife Refuge—1 antlered bull; however during the Aug. 15–Aug. 28 season only bulls with spike/fork antlers may be taken. The November season is open by Federal registration permit only.	Aug. 15–Aug. 28. Sept. 1–Sept. 15. Nov. 20–Nov. 30.
Unit 12—that portion lying east of the Nabesna River and Nabesna Glacier and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull; however during the Aug. 15–Aug. 28 season only bulls with spike/fork antlers may be taken.	Aug. 15–Aug. 28. Sept. 1–Sept. 30.
Unit 12—remainder—1 antlered bull; however during the Aug. 15–Aug. 28 season only bulls with spike/fork antlers may be taken.	Aug. 15–Aug. 28. Sept. 1–Sept. 15.
Coyote: 10 coyotes; however, no more than 2 coyotes may be taken before October 1	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit.	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Mar. 15.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31

Harvest limits	Open season
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver: 15 beaver per season	Nov. 1–Apr. 15.
Coyote: No limit	Oct. 15–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Sept. 20–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Oct. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Feb. 28.

(13) *Unit 13.* (i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13.

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) You may not use motorized vehicles or pack animals for hunting from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Cantwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) Except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Board, you may not use motorized vehicles for subsistence hunting, is prohibited in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no

more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear. Bears taken within Denali National Park must be sealed within 5 days of harvest. That portion within Denali National Park will be closed by announcement of the Superintendent after 4 bears have been harvested.	Aug. 10–May 31.
Caribou: 2 caribou by Federal registration permit only. Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	Aug. 10–Sept. 30. Oct. 21–Mar. 31
Sheep: Unit 13—excluding Unit 13(D) and the Tok Management Area and Delta Controlled Use Area—1 ram with 7/8 curl horn.	Aug. 10–Sept. 20.
Moose:	
Unit 13(E)–1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household	Aug. 1–Sept. 20.
Unit 13—remainder—1 antlered bull moose by Federal registration permit only	Aug. 1–Sept. 20.
Beaver: 1 beaver per day, 1 in possession	June 15–Sept. 10.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Jan. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
TRAPPING	
Beaver: No limit	Oct. 10–May 15.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten:	
Unit 13(A–D)—No limit	Nov. 10–Feb. 28.
Unit 13—remainder—No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Oct. 15–Apr. 30.
Wolverine: No limit	Nov. 10–Jan. 31.

(14) *Unit 14.* (i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River:

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A).

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Fort Richardson and Elmendorf Air Force Base Management Areas, consisting of the Fort Richardson and Elmendorf Military Reservation;

(B) You may not take wildlife for subsistence uses in the Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek.

(iii) Unit-specific regulations:

Harvest limits	Open season
HUNTING	
Black Bear: Unit 14(C)—1 bear	July 1–June 30.
Beaver: Unit 14(C)—1 beaver per day, 1 in possession	May 15–Oct. 31.
Coyote: Unit 14(C)—2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): Unit 14(C)—2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): Unit 14(C)—5 hares per day	Sept. 8–Apr. 30.
Lynx: Unit 14(C)—2 lynx	Dec. 15–Jan. 15.
Wolf: Unit 14(C)—5 wolves	Aug. 10–Apr. 30.
Wolverine: Unit 14(C)—1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): Unit 14(C)—5 per day, 10 in possession	Sept. 8–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): Unit 14(C)—10 per day, 20 in possession	Sept. 8–Mar. 31.

Harvest limits	Open season
TRAPPING	
Beaver: Unit 14(C)—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season.	Dec. 1–Apr. 15.
Coyote: Unit 14(C)—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): Unit 14(C)—1 fox	Nov. 10–Feb. 28.
Lynx: Unit 14(C)—No limit	Dec. 15–Jan. 15.
Marten: Unit 14(C)—No limit	Nov. 10–Jan. 31.
Mink and Weasel: Unit 14(C)—No limit	Nov. 10–Jan. 31.
Muskrat: Unit 14(C)—No limit	Nov. 10–May 15.
Otter: Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolf: Unit 14(C)—No limit	Nov. 10–Feb. 28
Wolverine: Unit 14(C)—No limit	Nov. 10–Feb. 28.

(15) *Unit 15.* (i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet, and Turnagain Arm from Gore Point to the point where longitude line 150° 00′ W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary:

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15.

(ii) You may not take wildlife, except for grouse, ptarmigan, and hares that may be taken only from October 1–March 1 by bow and arrow only, in the Skilak Loop Management Area, which consists of that portion of Unit 15(A) bounded by a line beginning at the eastern most junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its western most junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not trap furbearers for subsistence in the Skilak Loop Wildlife Management Area;

(C) You may not trap marten in that portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier;

(D) You may not take red fox in Unit 15 by any means other than a steel trap or snare;

(E) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Black Bear:	
Unit 15(C)—3 bears	July 1–June 30.
Unit 15—remainder	No open season.
Moose:	
Unit 15(A)—excluding the Skilak Loop Wildlife Management Area.—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 18–Sept. 20.
Unit 15(A)—Skilak Loop Wildlife Management Area	No open season.
Unit 15(B) and (C)—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 10–Sept. 20.
Coyote: No limit	Sept. 1–Apr. 30.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Wolf:	
Unit 15—that portion within the Kenai National Wildlife Refuge—2 Wolves	Aug. 10–Apr. 30.
Unit 15—remainder—5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 Wolverine	Sept. 1–Mar. 31.
Grouse (Spruce): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Grouse (Ruffed)	No open season.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 15(A) and (B)—20 per day, 40 in possession	Aug. 10–Mar. 31.
Unit 15(C)—20 per day, 40 in possession	Aug. 10–Dec. 31.
Unit 15(C)—5 per day, 10 in possession	Jan. 1–Mar. 31.
TRAPPING	
Beaver: 20 Beaver per season	Nov. 10–Mar. 31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): 1 Fox	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten:	
Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier	No open season.

Harvest limits	Open season
Remainder of Unit 15—No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–May 15.
Otter: Unit 15—No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: Unit 15(B) and (C)—No limit	Nov. 10–Feb. 28.

(16) *Unit 16.* (i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16.

(ii) You may not take wildlife for subsistence uses in the Mount McKinley National Park, as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Caribou: 1 caribou	Aug. 10–Oct. 31.
Moose:	
Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 antlered bull.	Sept. 1–Sept. 15.
Unit 16(B)—remainder—1 moose; however, antlerless moose may be taken only from Sept. 25–Sept. 30 and from Dec. 1–Feb. 28 by Federal registration permit only.	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
TRAPPING	
Beaver: No limit	Oct. 10–May 15.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 15–Jan. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(17) *Unit 17.* (i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including Hagemeister Island and the Walrus Islands:

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legal hunting camps, you may not use any motorized vehicle for hunting ungulates, bears, wolves, and wolverine, including transportation of hunters and parts of ungulates, bear, wolves, or wolverine in the Upper Mulchatna Controlled Use Area consisting of Unit 17(B), from Aug. 1–Nov. 1;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in the Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, if you have obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
HUNTING	
Black Bear: 2 bears	Aug. 1–May 31.
Brown Bear: Unit 17—1 bear by State registration permit only	Sept. 1–May 31.
Caribou:	
Unit 17(A) and (C)—that portion of 17(A) and (C) consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—2 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark's Point, and Ekuk during seasons identified above.	Aug. 1—Sept. 30. Dec. 1–Mar. 31.
Unit 17(B) and (C)—that portion of 17(C) east of the Wood River and Wood River Lakes—5 caribou; however, no more than 2 bulls may be taken from Oct. 1–Nov. 30.	Aug. 1–Apr. 15.
Unit 17(A)—remainder and 17(C)—remainder—selected drainages; a harvest limit of up to 5 caribou will be determined at the time the season is announced.	Season to occur between Aug. 1–Mar. 31, harvest limit, and hunt area to be announced by the Togiak National Wildlife Refuge Manager.
Sheep: 1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 17(A)	No open season.
Unit 17(B)—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 bull by State registration permit only during the period Aug. 20–Aug. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Unit 17(C)—that portion that includes the Iowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 bull by State registration permit only during the period Aug. 20–Aug. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Unit 17(B)—remainder and 17(C)—remainder—1 bull by State registration permit only during the periods Aug. 20–Aug. 31 and Dec. 1–Dec. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver: Unit 17—40 beaver per season	Nov. 10–Mar. 31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: 2 muskrats	Nov. 10–Feb. 28.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(18) *Unit 18.* (i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Kalskag Controlled Use Area which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag, you may not use aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in the Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, if you have obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 18 from Apr. 1–Jun. 10;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou south of the Yukon River on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(C) You may take caribou from a boat moving under power in Unit 18.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear by State registration permit only	Sept. 1–May 31.
Caribou:	
Unit 18—that portion south of the Yukon River—A harvest limit of up to 5 caribou will be determined at the time the season is announced and will be based on the management objectives in the ''Qavilnguut (Kilbuck) Caribou Herd Cooperative Management Plan.'' The season will be closed when the total harvest reaches guidelines as described in the approved ''Qavilnguut (Kilbuck) Caribou Herd Cooperative Management Plan.''.	Season to occur between Aug. 25 and Mar. 31 to be announced by the Yukon Delta National Wildlife Refuge Manager.
Unit 18—that portion north of the Yukon River—5 caribou per day	Aug. 1–Mar. 31.
Moose:	
Unit 18—that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of, but not including, the Andreafsky River drainage—1 antlered bull.	Sept. 5–Sept. 25.
Unit 18—south of and including the Kanektok River drainages	No open season.
Unit 18—Kuskokwim River drainage—1 antlered bull. A 10-day hunt to occur between Dec. 1 and Feb. 28 (1 bull, evidence of sex required) will be opened by announcement.	Aug. 25–Sept. 25. Winter season to be announced.
Unit 18—remainder—1 antlered bull. A 10-day hunt to occur between Dec. 1 and Feb. 28 (1 bull, evidence of sex required) will be opened by announcement.	Sept. 1–Sept. 30. Winter season to be announced
Public lands in Unit 18 are closed to the hunting of moose, except by Federally-qualified rural Alaska residents during seasons identified above.	
Beaver: No limit	July 1–June 30.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Mar. 31.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–May 30.
TRAPPING	
Beaver: No limit	July 1–June 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Mar. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Mar. 31.

(19) *Unit 19.* (i) Unit 19 consists of the Kuskokwim River drainage upstream from a straight line drawn between Lower Kalskag and Piamiut:

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(19) are permitted in Denali National

Preserve and lands added to Denali National Park on December 2, 1980;

(B) In the Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152° 50′ W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf benchmark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, you may not use aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area;

(C) You may hunt brown bear by State registration permit in lieu of a resident tag in the Western Alaska Brown Bear Management Area, which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, if you have obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30.

(B) [Reserved]

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 19(A) and (B)—those portions which are downstream of and including the Aniak River drainage—1 bear by State registration permit.	Sept. 1–May 31.
Unit 19(A)—remainder, 19(B)—remainder, and Unit 19(D)—1 bear every four regulatory years	Sept. 10–May 25.
Caribou:	
Unit 19(A)—north of Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Feb. 28.
Unit 19(A)—south of the Kuskokwim River and Unit 19(B) (excluding rural Alaska residents of Lime Village)—5 caribou.	Aug. 1–Apr. 15.
Unit 19(C)—1 caribou	Aug. 10–Oct. 10.
Unit 19(D)—south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Jan. 31.
Unit 19(D)—remainder—1 caribou	Aug. 10–Sept. 30.
Unit 19—rural Alaska residents domiciled in Lime Village only—no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1–Aug. 9. Reporting will be by a community reporting system.	July 1–June 30.
Sheep: 1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 19—Rural Alaska residents of Lime Village only—no individual harvest limit, but a village harvest quota of 40 moose (including those taken under the State Tier II system); either sex. Reporting will be by a community reporting system.	July 1–June 30.
Unit 19(A)—that portion north of the Kuskokwim River upstream from, but not including the Kolmakof River drainage and south of the Kuskokwim River upstream from, but not including the Holokuk River drainage—1 moose; however, antlerless moose may be taken only during the Feb. 1–Feb. 10 season.	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Unit 19(A)—remainder—1 bull	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Unit 19(B)—1 antlered bull	Sept. 1–Sept. 30.
Unit 19(C)—1 antlered bull	Sept. 1–Oct. 10.
Unit 19(C)—1 bull by State registration permit	Jan. 15–Feb. 15.
Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1–Sept. 30.
Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Unit 19(D)—remainder—1 antlered bull	Sept. 1–Sept. 30. Dec. 1–Dec. 15.
Coyote: 10 coyotes; however, no more than 2 coyotes may be taken before October 1	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver: No limit	Nov. 1–Jun. 10.
Coyote: No limit	Nov. 1–Mar. 31.

Harvest limits	Open season
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Mar. 31.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(20) *Unit 20.* (i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages, and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River:

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) You may not use motorized vehicles or pack animals for hunting from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) You may not use firearms or motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor is authorized only for subsistence taking of wildlife;

(D) You may not use any motorized vehicle for hunting from August 5–September 20 in the Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) You may by permit only hunt moose on the Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning;

(F) You may hunt moose by bow and arrow only in the Fairbanks Management Area, which consists of the Goldstream subdivision (SE ¼ SE ¼, Section 28 and Section 33, Township 2 North, Range 1 West, Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready

Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may not use a steel trap, or a snare using cable smaller than 3/32 inch diameter to trap wolves in Unit 20(E) during April and October;

(C) Residents of Unit 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 20(E)—1 bear	Aug. 10–June 30.
Unit 20—remainder—1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 20(E)—1 bull by joint State/Federal registration permit only. The fall season will close when a combined State/Federal harvest of 55 bulls has been reached. The winter season will close when the combined fall and winter State/Federal harvest quota of 150 bulls for the Fortymile herd has been reached. The season closures will be announced by the Northern Field Office Manager, Bureau of Land Management after consultation with the National Park Service and Alaska Department of Fish and Game.	Aug. 10–Sept. 30. Nov. 15–Feb. 28.
Unit 20(F)—Tozitna River drainage—1 caribou; however, only bull caribou may be taken Aug. 10–Sept. 30	Aug. 10–Sept. 30. Nov. 26–Dec. 10. Mar. 1–Mar. 15.
Unit 20(F)—south of the Yukon River—1 caribou	Dec. 1–Dec. 31.
Remainder of Unit 20(F)—1 bull	Aug. 10–Sept. 30.
Moose:	
Unit 20(A)—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only	Sept. 1–Sept. 20. Jan. 10–Feb. 28.
Unit 20(B)—remainder—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(C)—that portion within Denali National Park and Preserve west of the Toklat River, excluding lands within Mount McKinley National Park as it existed prior to December 2, 1980—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30. Nov. 15–Dec. 15.
Unit 20(C)—remainder—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30.
Unit 20(E)—that portion within Yukon Charley National Preserve—1 bull	Aug. 20–Sept. 30.
Unit 20(E)—that portion drained by the Forty-mile River (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 antlered bull; however during the period Aug. 20–Aug. 28 only a bull with Spike/fork antlers may be taken.	Aug. 20–Aug. 28. Sept. 1–Sept. 15.
Unit 20(F)—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only.	Sept. 1–Sept. 25.
Unit 20(F)—remainder—1 antlered bull	Sept. 1–Sept. 25.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx:	
Unit 20(E)—2 lynx	Nov. 1–Jan. 31.
Unit 20—remainder—2 lynx	Dec. 1–Jan. 31.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 in possession are sharp-tailed grouse.	Aug. 25–Mar. 31.
Unit 20—remainder—15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 20—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Unit 20—remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver:	
Units 20(A), 20(B), Unit 20(C), and 20(F)—No limit	Nov. 1–Apr. 15.
Units 20(D) and (E)—25 beaver	Nov. 1–Apr. 15.
Coyote:	
Unit 20(E)—No limit	Oct. 15–Apr. 30.
Remainder Unit 20—No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.

Harvest limits	Open season
Lynx:	
Unit 20(A), (B), (D), (E), and (C) east of the Teklanika River—No limit	Dec. 1–Feb. 15.
Unit 20(F) and the remainder of 20(C)—No limit	Nov. 1—Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat:	
Unit 20(E)—No limit	Sept. 20–June 10.
Unit 20—remainder—No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf:	
Unit 20(A, B, C, & F)—No limit	Nov. 1–Apr. 30.
Unit 20(D)—No limit	Oct. 15–Apr. 30.
Unit 20(E)—No limit	Oct. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Feb. 28.

(21) *Unit 21.* (i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including the Tozitna River drainage on the north bank, and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River drainage upstream from the Dulbi River drainage:

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to, but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 21(D), Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) If you have a trapping license, you may use a firearm to take beaver in Unit 21(E) from Apr. 1–June 1;

(C) The residents of Unit 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State;

(D) The residents of Unit 21 may take up to three moose per regulatory year for the celebration known as the Kaltag/Nulato Stickdance, under the terms of a Federal registration permit. Permits will

be issued to individuals only at the request of the Native Village of Kaltag or Nulato. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 21(D)—1 bear by State registration permit only	Sept. 1–June 15.
Unit 21—remainder—1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 21(A)—1 caribou	Aug. 10–Sept. 30. Dec. 10–Dec. 20.
Unit 21(B), (C), and (E)—1 caribou	Aug. 10–Sept. 30.
Unit 21(D)—north of the Yukon River and east of the Koyukuk River 1 caribou; however, 2 additional caribou may be taken during a winter season to be announced.	Aug. 10–Sept. 30. Winter season to be announced.
Unit 21(D)—remainder—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Moose:	
Unit 21(A)—1 bull	Aug. 20–Sept. 25. Nov. 1–Nov. 30.
Unit 21(B) and (C)—1 antlered bull	Sept. 5–Sept. 25.
Unit 21(D)—Koyukuk Controlled Use Area—1 moose; however, antlerless moose may be taken only during Aug. 27–31 and the February season. During the Aug. 27–Sept. 20 season a State registration permit is required. Moose may not be taken within one-half mile of the mainstem Yukon River during the February season. A 10-day winter hunt to occur between Feb. 1 and Feb. 28 will be opened by announcement of the Koyukuk/Nowitna National Wildlife Refuge Manager after consultation with the ADF&G area biologist and the Chairs of the Western Interior Regional Advisory Council and Middle Yukon Fish and Game Advisory Committee.	Aug. 27–Sept. 20. Winter season to be announced.
Unit 21(D)—remainder—1 moose; however, antlerless moose may be taken only during Sept. 21–25 and the February season. Moose may not be taken within one-half mile of the mainstem Yukon River during the February season. A 10-day winter hunt to occur between Feb. 1 and Feb. 28 will be opened by announcement of the Koyukuk/Nowitna National Wildlife Refuge Manager after consultation with the ADF&G area biologist and the Chairs of the Western Interior Regional Advisory Council and Middle Yukon Fish and Game Advisory Committee.	Sept. 5–Sept. 25. Winter season to be announced.
Unit 21(E)—1 moose; however, only bulls may be taken from Aug. 20–Sept. 25; moose may not be taken within one-half mile of the Innoko or Yukon River during the February season.	Aug. 20–Sept. 25. Feb. 1–Feb. 10.
Coyote: 10 coyotes; however, no more than 2 coyotes may be taken before October 1	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver: No limit	Nov. 1–June 10.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(22) *Unit 22.* (i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) You may hunt brown bear by State registration permit in lieu of a resident

tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 22 during the established seasons;

(B) Coyote, incidentally taken with a trap or snare intended for red fox or wolf, may be used for subsistence purposes;

(C) A snowmachine may be used to position a hunter to select individual caribou for harvest provided that the animals are not shot from a moving snowmachine.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 22(A)—1 bear by State registration permit by residents of Unit 22(A) only	Sept. 1–May 31.
Unit 22(B)—1 bear by State registration permit by residents of Unit 22(B) only	Sept. 1–May 31.
Unit 22(C)	No open season.
Unit 22(E)—1 bear by State registration permit only	Aug. 1–May 31.
Unit 22—remainder—1 bear by State registration permit	Sept. 1–May 31.
Caribou: Unit 22(A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Moose:	
Unit 22(A)—1 bull; however, the period of Dec. 1–Jan. 31 is closed to hunting except by residents of Unit 22(A) only.	Aug. 1–Sept. 30. Dec. 1–Jan. 31.
Unit 22(B)—1 bull	Aug. 1–Jan. 31.
Unit 22(C)—1 antlered bull	Sept. 1–Sept. 14.
Unit 22(D)—that portion within the Kuzitrin River drainage—1 antlered bull	Aug. 1–Jan. 31.
Unit 22(D)—remainder—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(E)—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 22(D)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Six Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 39 permits.	Aug. 1–Mar. 15.
Unit 22(E)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Eleven Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 23 permits.	Aug. 1–Mar. 15.
Unit 22—remainder	No open season.
Beaver:	
Unit 22(A), (B), (D), and (E)—50 beaver	Nov. 1–June 10.
Unit 22—remainder	No open season.
Coyote: Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit	Sept. 1–Apr. 15.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Marten:	
Unit 22(A) 22(B)—No limit	Nov. 1–Apr. 15.
Unit 22—remainder	No open season.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 15.
Wolverine: 3 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 22(A) and 22(B) east of and including the Niukluk River drainage—40 per day, 80 in possession	Aug. 10–Apr. 30.
Unit 22 (E)—20 per day, 40 in possession	July 15–May 15.
Unit 22 Remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver:	
Unit 22(A), (B), (D), and (E)—50 beaver	Nov. 1–June 10.
Unit 22(C)	No open season.
Coyote: Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1–Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.

Harvest limits	Open season
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Apr. 15.

(23) *Unit 23.* (i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species in the Noatak Controlled Use Area, which consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Noatak River, and extending upstream to the mouth of Sapun Creek, is closed for the period August 25–September 15. This does not apply to the transportation of hunters or parts of ungulates, bear, wolves, or wolverine by regularly scheduled flights to communities by carriers that normally provide scheduled air service;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A); if you have obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) You may take caribou from a boat moving under power in Unit 23;

(B) In addition to other restrictions on method of take found in this § .25, you may also take swimming caribou with a firearm using rimfire cartridges;

(C) If you have a trapping license, you may take beaver with a firearm in all of Unit 23 from Nov. 1–Jun. 10;

(D) For the Baird and DeLong Mountain sheep hunts—A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(E) A snowmachine may be used to position a hunter to select individual caribou for harvest provided that the animals are not shot from a moving snowmachine.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 23—except the Baldwin Peninsula north of the Arctic Circle—1 bear by State registration permit	Sept. 1–May 31.
Unit 23—remainder—1 bear every four regulatory years	Sept. 1–Oct. 10. Apr. 15–May 25.
Caribou: 15 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 23—south of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Cutler and Redstone Rivers (Baird Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 20 full curl rams, based on a quota to be announced locally after the annual sheep population survey is completed. Federal public lands are closed to the taking of sheep except by Federally-qualified subsistence users.	Aug. 1–Sept. 30. The season will be closed when half of the quota has been harvested.
Unit 23—south of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Cutler and Redstone Rivers (Baird Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 20 full curl rams, based on a quota to be announced locally after the annual sheep population survey is completed. Federal public lands are closed to the taking of sheep except by Federally-qualified subsistence users.	Oct. 1–Apr. 1. The season will be closed when the total quota of sheep has been harvested including those harvested during the Aug. 1–Sept. 30 season.
Unit 23—north of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Aniuk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed.	Aug. 1–Sept. 30. The season will be closed when half of the quota has been harvested in the DeLong Mountains.

Harvest limits	Open season
Unit 23—north of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Aniuk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed.	Oct. 1–Apr. 1. The season will be closed when the total quota of sheep has been harvested in the DeLong Mountains including those harvested during the Aug. 1–Sept. 30 season.
Unit 23, remainder (Schwatka Mountains)—1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Unit 23, remainder (Schwatka Mountains)—1 sheep	Oct. 1–Apr. 30.
Moose:	
Unit 23—that portion north and west of and including the Singoalik River drainage, and all lands draining into the Kukpuk and Ipewik Rivers—1 moose; no person may take a cow accompanied by a calf.	July 1–Mar. 31.
Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1–Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1–Sept. 15. Oct. 1–Mar. 31.
Unit 23—remainder—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 23—south of Kotzebue Sound and west of and including the Buckland River drainage—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Eight Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 12 permits.	Aug. 1–Mar. 15.
Unit 23—remainder	No open season.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare: (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 1–Jan. 15.
Wolf: 5 wolves	Nov. 10–Mar. 31.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver:	
Unit 23—the Kobuk and Selawik River drainages—50 beaver	July 1–June 30.
Unit 23—remainder—30 beaver	July 1–June 30.
Coyote: No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: 3 lynx	Dec. 1–Jan. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Apr. 15.

(24) *Unit 24.* (i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use firearms or motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor is authorized only for subsistence taking of wildlife;

(B) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end

of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek, then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(D) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. You may not use aircraft in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 24—1 bear by State registration permit	Sept. 1–May 31.
Caribou:	
Unit 24—that portion south of the south bank of the Kanuti River, upstream from and including that portion of the Kanuti-Kilolitna River drainage, bounded by the southeast bank of the Kodosin-Nolitna Creek, then downstream along the east bank of the Kanuti-Kilolitna River to its confluence with the Kanuti River—1 caribou.	Aug. 10–Mar. 31.
Remainder of Unit 24—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 24—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 24—(excluding Anaktuvuk Pass residents)—that portion within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Unit 24—remainder—1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, antlerless moose may only be taken during the periods of Aug. 27–31, Dec. 1–Dec. 10, and Mar. 1–Mar. 10. During Aug. 27–Sept. 20, a State registration permit is required.	Aug. 27–Sept. 20. Dec. 1–Dec. 10. Mar. 1–Mar. 10.
Unit 24—that portion that includes the John River drainage within the Gates of the Arctic National Park—1 moose.	Aug. 1–Dec. 31.
Unit 24—the Alatna River drainage within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Dec. 31. Mar. 1–Mar. 10.
Unit 24—all drainages to the north of the Koyukuk River upstream from and including the Alatna River to and including the North Fork of the Koyukuk River, except those portions of the John River and the Alatna River drainages within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Sept. 25. Mar. 1–Mar. 10.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 antlered bull by Federal registration permit only.	Aug. 25–Sept. 25.
Unit 24—remainder—1 antlered bull. Public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by eligible rural Alaska residents.	Aug. 25–Sept. 25.
Coyote: 10 coyotes; however, no more than 2 coyotes may be taken before October 1	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver: No limit	Nov. 1–June 10.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(25) *Unit 25.* (i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use firearms or motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor is authorized only for subsistence taking of wildlife;

(B) The Arctic Village Sheep Management Area consists of that portion of Unit 25(A) north and west of Arctic Village, which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Red Sheep Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into 2 roughly equal drainages; the boundary follows the easternmost fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 62 miles along the divide to the head waters of the most northerly tributary of Red Sheep Creek then follows southerly along the divide designating the eastern extreme of the Red Sheep Creek drainage then to the confluence of Red Sheep Creek and the East Fork Chandalar River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may take caribou and moose from a boat moving under power in Unit 25;

(C) The taking of bull moose outside the seasons provided in this part for food in memorial potlatches and traditional cultural events is authorized in Unit 25(D) west provided that:

(*1*) The person organizing the religious ceremony or cultural event contact the Refuge Manager, Yukon Flats National Wildlife Refuge prior to taking or attempting to take bull moose and provide to the Refuge Manager the name of the decedent, the nature of the ceremony or cultural event, number to be taken, the general area in which the taking will occur;

(*2*) Each person who takes a bull moose under this section must submit a written report to the Refuge Manager, Yukon Flats National Wildlife Refuge not more than 15 days after the harvest specifying the harvester's name and address, and the date(s) and location(s) of the taking(s);

(*3*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in Unit 25(D) west;

(*4*) Any moose taken under this provision counts against the annual quota of 60 bulls.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 25(D)—1 bear	July 1–June 30.
Caribou:	
Unit 25(C)—that portion south and east of the Steese Highway—1 bull by joint State/Federal registration permit only. The fall season will close when a combined State/Federal harvest of 30 bulls has been reached. The winter season will close when the combined fall and winter State/Federal harvest quota of 150 bulls for the Fortymile herd has been reached. The season closures will be announced by the Northern Field Office Manager, Bureau of Land Management after consultation with the National Park Service and Alaska Department of Fish and Game.	Aug. 10–Sept. 30. Nov. 15–Feb. 28.
25(C)—that portion north and west of the Steese Highway—1 caribou; however, only bull caribou may be taken during the Aug. 10–Sept. 20 season. During the winter season, caribou may be taken only with a Federal registration permit. The winter season will be closed by announcement of the Northern Field Office, BLM, when the quota of 30 caribou has been taken.	Aug. 10–Sept. 20. Feb. 1–Mar. 31.
Unit 25(D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150°W.long.—1 bull	Aug. 10–Sept. 30. Dec. 1–Dec. 31.
Unit 25(A), (B), and the remainder of Unit 25(D)—10 caribou	July 1–Apr. 30.
Sheep:	
Unit 25(A)—that portion within the Dalton Highway Corridor Management Area	No open season.
Units 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik, and Chalkytsik during seasons identified above.	Aug. 10–Apr. 30.

Harvest limits	Open season
Unit 25(A)—remainder—3 sheep by Federal registration permit only	Aug. 10–Apr. 30.
Moose:	
Unit 25(A)—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 10.
Unit 25(B)—that portion within Yukon Charley National Preserve—1 bull	Aug. 20–Sept. 30.
Unit 25(B)—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull.	Aug. 25–Sept. 30. Dec. 1–Dec. 10.
Unit 25(B)—that portion, other than Yukon Charley National Preserve, draining into the north bank of the Yukon River upstream from and including the Kandik River drainage, including the islands in the Yukon River—1 antlered bull.	Sept. 5–Sept. 30. Dec. 1–Dec. 15.
Unit 25(B)—remainder—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 15.
Unit 25(C)—1 antlered bull	Sept. 1–Sept. 15.
Unit 25(D)(West)—that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 bull by a Federal registration permit. Alternate permits allowing for designated hunters are available to qualified applicants who reside in Beaver, Birch Creek, or Stevens Village. A total of 60 permits will be issued (25 to Stevens Village residents, 25 to Beaver residents, and 10 to Birch Creek residents). Moose hunting on public land in this portion of Unit 25(D)(West) is closed at all times except for residents of Beaver, Birch Creek, and Stevens Village during seasons identified above. The moose season will be closed when 60 moose have been harvested in the entirety (from Federal and non-Federal lands) of Unit 25(D)(West).	Aug. 25–Feb. 28.
Unit 25(D)—remainder—1 antlered moose	Aug. 25–Sept. 25. Dec. 1–Dec. 20.
Beaver:	
Unit 25, excluding Unit 25(C)—1 beaver per day; 1 in possession	Apr. 16–Oct. 31.
Unit 25(C)	No Federal open season.
Coyote: 2 coyotes	Sept. 1—Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx:	
Unit 25(C)—2 lynx	Dec. 1–Jan. 31.
Unit 25—remainder—2 lynx	Nov. 1–Feb. 28.
Wolf:	
Unit 25(A)—No limit	Aug. 10–Apr. 30.
Remainder of Unit 25—10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 25(C)—15 per day, 30 in possession	Aug. 10–Mar. 31.
Unit 25—remainder—15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 25(C)—those portions within 5 miles of Route 6 (Steese Highway)—20 per day, 40 in possession	Aug. 10–Mar. 31.
Unit 25—remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver:	
Unit 25(C)—No limit	Nov. 1–Apr. 15.
Unit 25—remainder—50 beaver	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine:	
Unit 25(C)—No limit	Nov. 1–Feb. 28.
Unit 25—remainder—No limit	Nov. 1–Mar. 31.

(26) *Unit 26.* (i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border including the Firth River drainage within Alaska:

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose from Aug. 1–Aug. 31 and from Jan. 1–Mar. 31 in Unit 26(A). No hunter may take or transport a moose, or part of a moose in Unit 26(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled service to this area, nor does it apply to transportation by aircraft to or between publicly owned airports;

(B) You may not use firearms or motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor is authorized only for subsistence taking of wildlife;

(C) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. You may not use aircraft in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) You may take caribou from a boat moving under power in Unit 26;

(B) In addition to other restrictions on method of take found in this § 25, you may also take swimming caribou with a firearm using rimfire cartridges;

(C) In Kaktovik, a Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(D) For the DeLong Mountain sheep hunts—A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 26(A)—1 bear by State registration permit	Sept. 1–May 31.
Unit 26(B) and (C)—1 bear	Sept. 1–May 31.
Caribou:	
Unit 26(A)—10 caribou per day; however, cow caribou may not be taken May 16–June 30. Federal lands south of the Colville River and east of the Killik River are closed to the taking of caribou by non-Federally qualified subsistence users from Aug. 1–Sept. 30.	July 1–June 30.
Unit 26(B)—10 caribou per day; however, cow caribou may be taken only from Oct. 1–Apr. 30	July 1–June 30.
Unit 26(C)—10 caribou per day	July 1–Apr. 30.
You may not transport more than 5 caribou per regulatory year from Unit 26 except to the community of Anaktuvuk Pass.	
Sheep:	
Unit 26(A) and (B)—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 26(A)—(excluding Anaktuvuk Pass residents)—those portions within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 26(A)—that portion west of Howard Pass and the Etivluk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed.	Aug. 1–Sept. 30. The season will be closed when half of the quota has been harvested in the DeLong Mountains.
Unit 26(A)—that portion west of Howard Pass and the Etivluk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed.	Oct. 1–Apr. 1. The season will be closed when the total quota of sheep has been harvested in the DeLong Mountains including those harvested during the Aug. 1–Sept. 30 season.
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.

Harvest limits	Open season
Unit 26(A)—remainder and 26(B)—remainder—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.
Unit 26(C)—3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger. A Federal registration permit is required for the Oct. 1–Apr. 30 season.	Aug. 10–Sept. 20. Oct. 1–Apr. 30.
Moose:	
Unit 26(A)—that portion of the Colville River drainage downstream from the mouth of the Anaktuvuk River—1 bull. Federal public lands are closed to the taking of moose by non-Federally qualified subsistence users.	Aug. 1–31.
Unit 26—remainder	No open season.
Muskox: Unit 26(C)—1 muskox by Federal registration permit only; 12 permits for bulls and 3 permits for cows may be issued to rural Alaska residents of the village of Kaktovik only. Public lands are closed to the taking of muskox, except by rural Alaska residents of the village of Kaktovik during open seasons.	Sept. 15–Mar. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes.	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 26(A) and (B)—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Unit 26(C)—10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Wolf: 15 wolves	Aug. 10–Apr. 30.
Wolverine: 5 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Coyote: No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1–Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Apr. 15.

Dated: July 25, 2000.

Kenneth E. Thompson,

Acting Regional Forester, USDA-Forest Service.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

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Part III

Securities and Exchange Commission

17 CFR Parts 210, 211, et al.
Financial Statements and Periodic Reports for Related Issuers and Guarantors; Final Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 211, 228, 240 and 249

[Release Nos. 33–7878; 34–43124; International Series No. 1229; FR–55; File No. S7–7–99]

RIN 3235–AH52

Financial Statements and Periodic Reports for Related Issuers and Guarantors

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting financial reporting rules for related issuers and guarantors of guaranteed securities. We also are adopting an exemption from Exchange Act periodic reporting for subsidiary issuers and subsidiary guarantors of these securities. These rules codify, in large part, the positions the staff has developed through Staff Accounting Bulletin No. 53, later interpretations, and the registration statement review process. We intend for these rules to eliminate uncertainty about which financial statements and periodic reports subsidiary issuers and subsidiary guarantors must file. We also intend these rules and the guidance we provide in this release to eliminate substantially the need for requests for staff ''no-action'' letters in this area.

EFFECTIVE DATE: September 25, 2000, except that Form 20–F (referenced in § 249.220f) is effective September 30, 2000.

FOR FURTHER INFORMATION CONTACT: Regarding Rule 12h–5, Michael Hyatte at (202) 942–2900; regarding the Regulation S–X and Regulation S–B revisions, Craig Olinger at (202) 942–2960, both in the Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rule 3–10 [1] of Regulation S–X [2] and Item 310 [3] of Regulation S–B.[4] We are adopting new Rule 3–16 [5] of Regulation S–X and new Rule 12h–5 [6] under the Securities Exchange Act of 1934.[7] We are amending Form 20–F [8] under the Exchange Act. We also are rescinding Staff Accounting Bulletin No. 53.[9]

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I. Executive Summary

Over the past two decades, it has become increasingly common for a parent company to raise capital through:

• Offerings of its own securities that are guaranteed by one or more of its subsidiaries; and

• Offerings of securities by a subsidiary that are guaranteed by the

[1] 17 CFR 210.3–10.
[2] 17 CFR 210.1–01 through 12–29.
[3] 17 CFR 228.310.
[4] 17 CFR 228.10 through 702.
[5] 17 CFR 210.3–16.
[6] 17 CFR 240.12h–5.
[7] 15 U.S.C. 78a *et seq.*
[8] 17 CFR 249. 220f.
[9] Staff Accounting Bulletin Release No. SAB 53 (June 13, 1983) [48 FR 28230].

parent company and, sometimes, one or more of the parent company's other subsidiaries.

Guarantees of securities are securities themselves for purposes of the Securities Act of 1933.[10] As a result, the Securities Act requires the offering of both the guaranteed security and the guarantee to be either registered or exempt from registration. A Securities Act registration statement must include disclosure of both financial and non-financial information about the issuer of the guaranteed security as well as any guarantors. Moreover, Securities Act registration causes both the issuer and the guarantors to become subject to Section 15(d)[11] of the Exchange Act. Section 15(d) requires all Securities Act registrants to file Exchange Act periodic reports for at least the fiscal year during which the related Securities Act registration statement became effective.

There are circumstances, however, where full Securities Act and Exchange Act disclosure by both the issuer and the guarantors may not be useful to an investment decision and, therefore, may not be necessary. For example, if a finance subsidiary issues debt securities guaranteed by its parent company, full disclosure of the finance subsidiary's financial information would be of little value. Instead, investors would look to the financial status of the parent company that guaranteed the debt to evaluate the likelihood of payment.

Subsidiary issuers and subsidiary guarantors raise a number of disclosure issues under the Securities Act and the Exchange Act. Included among these issues are:

- What information must issuers of guaranteed securities provide to potential investors in the registered offering;
- What information must guarantors provide to potential investors in the registered offering; and
- What information must those issuers and guarantors continue to provide to the secondary market.

In 1983, the staff addressed these issues in Staff Accounting Bulletin No. 53. In the 17 years since we published SAB 53, guaranteed securities have become significantly more complex. While the basic analysis of SAB 53 remains sound, the staff has had to expand on this analysis in response to registration statements and interpretive requests that involve new and complex transaction structures. In addition, the staff has responded to an increasing number of requests for relief from Exchange Act reporting.[12] In 1999, approximately one-fourth of all interpretive, no-action, and exemptive requests acted on by the Division of Corporation Finance involved the application of SAB 53.[13]

The staff's interpretations, which balance the burden on issuers and guarantors to disclose required information fully with the investor's need for information, have addressed new and complex structures effectively. On March 5, 1999, we proposed rules and revisions to codify, in large part, the staff's current analysis regarding the obligations of the issuers and guarantors.[14] We received 12 comment letters on our proposals.[15]

Today, we announce the adoption of those rules and revisions substantially as proposed. We believe these rules and revisions will:

- Eliminate uncertainty regarding financial statement requirements;
- Eliminate uncertainty regarding ongoing reporting;
- Eliminate the burden on issuers and guarantors to seek guidance regarding those requirements;[16] and
- Simplify the staff's interpretive structure by applying one standard—condensed consolidating financial information—instead of the current approach that requires more or less financial disclosure based solely on the existence of non-guarantor subsidiaries.

We are revising Rule 3–10 of Regulation S–X to require, generally, the inclusion of condensed consolidating financial information as a condition to omitting the separate financial statements of a subsidiary issuer or subsidiary guarantor.[17] There are, however, three situations in which no separate financial information or condensed consolidating financial information would be required, so long as the parent company financial statements include specified narrative disclosure. These situations arise

- Where the subsidiary issuer is a finance subsidiary and the parent company is the only guarantor of the securities;
- Where
- the parent company of the subsidiary issuer has no independent assets or operations,
- the parent company guarantees the securities,
- no subsidiary of the parent company guarantees the securities, and
- any subsidiaries of the parent company other than the issuer are minor; and
- Where
- the parent company issuer has no independent assets or operations, and
- all of the parent company's subsidiaries, other than minor subsidiaries, guarantee the securities.

We are adopting Exchange Act Rule 12h–5 to exempt from Exchange Act reporting requirements those subsidiary issuers and subsidiary guarantors that may omit separate financial statements under revised Rule 3–10. We are amending Form 20–F. We also are rescinding SAB 53.[18]

II. Financial Statement and Exchange Act Reporting Requirements for Subsidiary Guarantors and Subsidiary Issuers of Guaranteed Securities Before Today's Amendments

A. Financial Statement Requirements Before Today's Amendments

1. Basis for the Requirements

Rule 3–10 of Regulation S–X identifies which financial statements must be included in Securities Act registration statements, Exchange Act registration statements, and Exchange Act periodic reports for guarantors that are not filing under the small business issuer reporting system.[19] Item 310 of

[10] 15 U.S.C. 77a *et seq.*

[11] 15 U.S.C. 78o(d).

[12] SAB 53 instructs issuers to file exemptive applications under Section 12(h) of the Exchange Act with regard to the Exchange Act reporting obligations of subsidiary issuers and subsidiary guarantors. Early in the development of SAB 53 issues, the staff began processing these exemptive requests as requests for no-action letters instead of exemptive applications. This process continues today. Throughout this release, we will refer to these requests as requests for no-action letters.

[13] If requests for no-action letters under Exchange Act Rule 14a–8 [17 CFR 240.14a–8], the shareholder proposal rule, are excluded, nearly one-half of all Division of Corporation Finance no-action letters involved SAB 53.

[14] Securities Act Release No. 7649 (March 5, 1999) [64 FR 10579].

[15] These letters are available in File S7–7–99 in the Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters sent to the Commission electronically are available at our web site—www.sec.gov.

[16] Issuers of guaranteed securities and guarantors could still request a no-action letter from the Division of Corporation Finance if today's amendments do not address their situation. The staff will apply the principles expressed in this release to those requests.

[17] In connection with the revision to Rule 3–10, we are:

- Moving the financial statement requirement of affiliates whose securities collateralize registered securities from Rule 3–10 to new Rule 3–16; and
- Adopting new Notes 3 and 4 to Item 310 of Regulation S–B requiring small business issuers to present financial information for the fiscal periods they are required to present in accordance with amended Rule 3–10 and new Rule 3–16 of Regulation S–X.

[18] Rule 3–10 and the positions expressed in this release will replace all prior Division of Corporation Finance no-action positions relating to SAB 53.

[19] Before today's amendments, Rule 3–10 of Regulation S–X also prescribed financial statement requirements for affiliates of reporting issuers when the securities of such affiliates are the collateral for

Continued

Regulation S–B identifies those requirements for guarantors that are filing under the small business issuer reporting system.

Before today's amendments, those requirements were modified by SAB 53. In SAB 53, the staff responded to questions arising from the increased number of guaranteed securities offerings. SAB 53 did not amend Rule 3–10 of Regulation S–X. Instead, it described the approach the staff would take in its review of registration statements for two types of offerings of guaranteed debt securities:

- Securities issued by a subsidiary that are guaranteed by the parent company of that subsidiary; and
- Securities issued by a parent company that are guaranteed by a subsidiary of that company.

The staff has expanded the analysis of SAB 53 through its processing of registration statements and requests for no-action letters.

2. Financial Statement Requirements

SAB 53 and the expansion of its analysis have modified the financial statement requirements of Rule 3–10 and Item 310 for subsidiary guarantors of debt securities and subsidiary issuers of guaranteed debt securities. The basic assumption of the financial statement requirements before today's amendments was that there is no need for full financial statements of both the issuer of the guaranteed security and the guarantor when:

- The issuer or guarantor is a wholly-owned subsidiary of the parent company; and
- The guarantee is full and unconditional.

Under this analysis, if either of these conditions was not met, full financial statements for the subsidiary issuer or subsidiary guarantor would have to be included in the registration statement. If both conditions were met, the amount of financial information required for the subsidiary issuer or subsidiary guarantor would depend on whether the subsidiary had independent operations. For example,

- If the subsidiary issuer or subsidiary guarantor was a finance subsidiary, no separate financial statements were required; and
- If the subsidiary was not a finance subsidiary, there was a two-step process for determining the appropriate financial information:
  - If there was only one subsidiary issuer or subsidiary guarantor present, summarized financial information was appropriate; and
  - In all other situations, condensed consolidating financial information was appropriate.

B. Exchange Act Reporting Requirements Before Today's Amendments

1. Basis for the Requirements

Exchange Act Section 15(d) requires separate periodic reports from both the issuer and the guarantor of securities offered under an effective Securities Act registration statement. SAB 53 only briefly addresses the Exchange Act reporting obligations of subsidiary issuers of parent company-guaranteed securities. In a footnote, SAB 53 states:

> where the parent guarantor of an issuer subsidiary * * * is a reporting company under the Exchange Act, upon application to the Commission such a subsidiary would be conditionally exempted pursuant to Section 12(h)[20] of the Exchange Act from reporting obligations under such Act.

Since the issuance of SAB 53, the staff of the Division of Corporation Finance has responded to an increasing number of requests for no-action letters relating to Exchange Act reporting.

2. Exchange Act Reporting Requirements

The staff's analysis of no-action requests relating to Exchange Act periodic reporting is the same as its analysis of the financial statement requirements for subsidiary guarantors and subsidiary issuers of guaranteed securities in Securities Act registration statements. Therefore, if a subsidiary issuer or subsidiary guarantor was not required to include separate financial statements under the SAB 53 analysis, the staff would grant a request for a no-action letter relating to Exchange Act periodic reporting. Instead of separate reporting for the subsidiary issuer or subsidiary guarantor, the parent company would present in its periodic reports the same level of modified information regarding the subsidiary as it presented in the related Securities Act registration statement.

III. Today's Amendments to the Financial Statement and Exchange Act Reporting Requirements for Subsidiary Guarantors and Subsidiary Issuers of Guaranteed Securities

We believe that the requirements for subsidiary issuer and subsidiary guarantor financial information should be provided in Regulation S–X. We also believe that the exemption from Exchange Act reporting should be provided in a rule that parallels the financial statement requirements. To accomplish this, we are adopting, in large part, the staff's current approach in these areas.

We believe today's amendments will provide investors with meaningful and comparable financial information about subsidiary issuers and subsidiary guarantors. We also believe that these amendments will provide significant benefits to subsidiary issuers and subsidiary guarantors by removing uncertainty about financial statement requirements and reducing the number of requests for no-action letters.

A. Rule 3–10 of Regulation S–X

We are adopting, as proposed, amendments to paragraph (a) of Rule 3–10. These amendments restate the general rule that all issuers or guarantors of registered securities must include separate financial statements. We also are adopting new paragraphs (b) through (f) of Rule 3–10. These new paragraphs provide exceptions to the general rule of Rule 3–10(a) and permit modified financial information in registration statements and the parent company's periodic reports when

- A finance subsidiary issues securities that its parent company guarantees;
- An operating subsidiary issues securities that its parent company guarantees;
- A subsidiary issues securities that its parent company and one or more other subsidiaries of its parent company guarantee;
- A parent company issues securities that one of its subsidiaries guarantees; and
- A parent company issues securities that more than one of its subsidiaries guarantees.

Only one of these five paragraphs can apply to any particular offering and the subsequent Exchange Act reporting. With respect to these five paragraphs, the following two-part analysis determines whether modified financial information may be provided for subsidiary issuers and subsidiary guarantors.

- Is the subsidiary issuer or subsidiary guarantor 100% owned by its parent company?
- Are the guarantees full and unconditional?

If the answer to both questions is yes, modified financial information is allowed. If the answer to either question is no, modified financial information is

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any class of the issuer's registered securities. Today's amendments move these requirements from Rule 3–10 to new Rule 3–16 of Regulation S–X. A more complete discussion of Rule 3–16 is located in Section III.D. ''Financial statements of affiliates whose securities collateralize registered securities—Rule 3–16 of Regulation S–X.''

[20] 15 U.S.C. 78*l*(h).

not allowed. We have adopted three other new paragraphs to Rule 3–10. Paragraph (g) provides the financial statement requirements for recently acquired subsidiary issuers and subsidiary guarantors. Paragraph (h) defines the following terms for purposes of Rule 3–10:

- 100% owned;
- Full and unconditional;
- Annual report;
- Quarterly report;
- No independent assets or operations;
- Minor;
- Finance subsidiary; and
- Operating subsidiary.

Paragraph (i) provides instructions for preparing the condensed consolidating financial information required by paragraphs (c) through (f) of Rule 3–10.

1. Two-Part Analysis To Determine Whether Modified Financial Information May Be Provided

a. The Meaning of ''100% Owned''

Under SAB 53, a subsidiary was ''wholly owned'' if all of its outstanding voting shares and any outstanding securities convertible into its voting shares were owned, either directly or indirectly, by its parent company.[21] This meaning differs from the general definition of ''wholly-owned subsidiary'' in Rule 1–02(aa) of Regulation S–X.[22] Rule 1–02(aa) treats a subsidiary as wholly owned if substantially all of its voting shares are held by its parent company. We proposed that the meaning of ''wholly owned'' for the purposes of Rule 3–10 would be, in large part, the same as the staff's analysis under SAB 53.

The comments on the proposed definition of wholly owned in Rule 3–10 varied significantly. One commenter suggested that the special relief granted by SAB 53 should be extended to any issuer or guarantor that is a subsidiary.[23] Another commenter believed just the opposite, indicating its support for the definition as proposed.[24] A third commenter suggested that reduced financial reporting should be permitted for 100%-owned subsidiaries and subsidiaries whose minority shareholders consist solely of affiliates of the consolidated group.[25]

We are adopting the meaning of ''wholly owned'' that was used under SAB 53. However, we have used the term ''100% owned'' in Rule 3–10 to avoid confusion with the definition of ''wholly-owned subsidiary'' in Rule 1–02(aa) of Regulation S–X. We discuss the definition of 100% owned and the reasons for adopting that definition in the following sections.[26]

i. Subsidiaries in Corporate Form

(A) Definition of 100% Owned

A subsidiary in corporate form is 100% owned for the purposes of Rule 3–10 if all of its outstanding voting shares and any outstanding securities convertible into its voting shares are owned, directly or indirectly, by its parent company.[27] We are adopting this definition because it assures investors in the guaranteed securities that there is no competing common equity interest in the assets or revenues of the subsidiary. This allows investors to evaluate the creditworthiness of the parent and subsidiary as a single, indivisible business. If a third party holds an interest in the subsidiary, the risks associated with investment in parent and subsidiary are not identical. Where those risks are not identical, there is not the financial unity between the subsidiary and its parent that is needed to justify the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10.

To remain 100% owned, a subsidiary corporation may not issue any securities convertible into its voting shares unless those convertible securities are owned, directly or indirectly, by its parent company. This would preclude the use of options that are exercisable into voting shares unless those options are owned, directly or indirectly, by the subsidiary's parent company.

One commenter addressed convertible securities.[28] That commenter believed that a subsidiary that has issued securities convertible into its voting securities to someone other than its parent company should be considered 100% owned if the parent company has the unilateral right to reacquire such instruments for a fixed or determinable price before their conversion. We do not agree that the definition of 100% owned should include a subsidiary that issued to a third party securities convertible into its voting shares, irrespective of the parent's right to repurchase. A subsidiary that has issued to any person other than its parent company securities that are convertible into its voting stock does not have the financial unity with its parent company that is necessary to qualify for the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10.

(B) Interpretive Position Regarding Foreign Issuers and Guarantors

The definition of 100% owned in Rule 3–10 precludes any outside ownership of voting shares for subsidiary corporations. Therefore, subsidiaries organized in a jurisdiction that requires directors to own shares would not meet the 100%-owned test. Nonetheless, we concur in the staff's response to Crown Cork & Seal Company, Inc. (March 10, 1997), in which the staff agreed to a no-action request under SAB 53 from a subsidiary organized in the Republic of France even though it had more than one voting shareholder. That no-action request stated that French law required the subsidiary to have a total of seven shareholders and also required each director to own at least one share. The request explained that, in order to comply with this requirement, the parent company would transfer approximately six shares, equaling approximately 0.24% of the parent company's outstanding shares, to its directors. In granting the no-action position, the staff noted that the non-parent company ownership was at the minimum level required to comply with French law. We have not included this exception in amended Rule 3–10 because it is an uncommon situation that should be handled through the no-action request process. However, the staff will continue to recognize the exception presented by Crown Cork & Seal Company, Inc., as well as any future no-action requests from other issuers under substantially similar facts.[29]

[21] *See, e.g.,* Citizens Utilities Company (May 20, 1996).

[22] 17 CFR 210.1–02(aa).

[23] Comment letter of Sullivan & Cromwell (May 4, 1999).

[24] Comment letter of PricewaterhouseCoopers (May 4, 1999).

[25] Comment letter of KPMG LLP (May 4, 1999).

[26] We also have included Appendix A at the end of this release to further illustrate the meaning of 100% owned. We included four appendices in the proposing release to give guidance on the application of the proposed rules. We are rescinding those appendices. Issuers and guarantors should not rely on those appendices. Instead, issuers and guarantors should consider the appendices to this adopting release when applying today's amendments to specific situations. The staff intends to publish additional guidance on the application of today's amendments.

[27] Rule 1–02(z) of Regulation S–X [17 CFR 210.1–02(z)] defines ''voting shares.'' All securities of a subsidiary that confer the right to elect directors or their functional equivalents annually, whether or not those securities are equity or debt, must be held by the parent to satisfy the 100%-owned test. This test is unaffected by the existence of other securities that grant the right to vote in the event of special circumstances, such as a default.

[28] Comment letter of PricewaterhouseCoopers (May 4, 1999).

[29] If any issuer and guarantor fail to meet the 100%-owned definition, but can demonstrate that their situation provides them with the financial unity needed to qualify for the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10, they may request relief from the

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ii. Subsidiaries in Other Than Corporate Form

We also proposed a separate definition of 100% owned for subsidiaries that are not in corporate form. As proposed, a non-corporate entity would be 100% owned if its parent company owned all of its outstanding interests. We have altered this definition slightly. As adopted, a subsidiary not in corporate form is 100% owned if all outstanding interests in that subsidiary are owned, either directly or indirectly, by its parent company other than:

- Securities to which Rule 3–10 applies that are guaranteed by its parent company and, if applicable, other 100%-owned subsidiaries of its parent company; and
- Guarantees of securities issued by its parent company and, if applicable, other 100%-owned subsidiaries of its parent company.

This revision recognizes that the securities issued in the transaction that makes the subsidiary subject to Rule 3–10 may be ''interests'' for purposes of the definition of 100% owned.

One commenter suggested that the definition of 100% owned for an unincorporated entity should be changed so that relief would be available so long as the parent owns all or substantially all of the ''participating'' ownership interests in the entity.[30] We are not adopting this suggestion. Unincorporated entities operate differently than corporations and one form of participation in the operation of an entity may be separate from another form of participation in the entity. For example, in a limited liability corporation, the ability to vote can be separated from the ability to manage the financial affairs of the entity. The staff historically has allowed, and Rule 3–10 will allow, modified financial information only when the parent and subsidiary or subsidiaries have financial unity.

b. The Meaning of ''Full and Unconditional''

We proposed to define a ''full and unconditional'' guarantee consistent with the staff's interpretation of that term for purposes of SAB 53. We are adopting the definition as proposed.

The definition we adopt today is intended to limit the availability of the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10 to those situations where the payment obligations of the issuer and guarantor are essentially identical. Under Rule 3–10, a guarantee is full and unconditional if

> when an issuer of a guaranteed security has failed to make a scheduled payment, the guarantor is obligated to make the scheduled payment immediately and, if it doesn't, any holder of the guaranteed security may immediately bring suit directly against the guarantor for payment of all amounts due and payable.[31]

Under this definition, a guarantee is not full and unconditional if the amount of the guarantor's liability is less than the issuer's or, should the issuer default, the guarantor's payment schedule differs from the issuer's payment schedule. There can be no conditions, beyond the issuer's failure to pay, to the guarantor's payment obligation. For example, the holder cannot be required to exhaust its remedies against the issuer before seeking payment from the guarantor.

In the following three sections, we discuss specific interpretive issues presented by the definition of full and unconditional guarantee.

i. A Guarantee Is Not Full and Unconditional When It Is Not Operative Until Some Time After Default

One commenter noted that, under the proposed definition, a guarantee that became due only after the passage of some time period after default would not be full and unconditional under Rule 3–10.[32] This commenter indicated that this definition would not comport with a debt structure used in some European transactions, where there is a ''standstill'' period before the guarantee can be enforced. The commenter expressed the view that the ''standstill'' requirement should not result in additional disclosure obligations and the proposed definition would, likely, be detrimental to investors in European debt securities. We have not revised the definition as suggested. The presence of a delay before the guarantee could be enforced would undermine the financial unity that is necessary for the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10. Specifically, if there is any period of time during which the investor may not proceed against the guarantor(s), then it is necessary for that investor to be able to fully evaluate the issuer and guarantor(s) separately. Because the payment obligation does not fall uniformly across the issuer and the related guarantors when there is a delay before the guarantee can be enforced, each party in that structure must provide separate financial statements.

ii. A Guarantee Can Be Full and Unconditional Even If It Has a Fraudulent Conveyance ''Savings Clause''

A guarantee can be full and unconditional even if it includes a ''savings clause'' related to bankruptcy and fraudulent conveyance laws. These savings clauses prevent the guarantor from making an otherwise required payment if the money needed to make that payment is first recoverable by other creditors under bankruptcy or fraudulent conveyance laws. However, if any clause places a specific limit on the amount of the guarantor's regular payment obligation to avoid application of bankruptcy or fraudulent conveyance laws, that guarantee would not be full and unconditional.

For example, the following savings clauses would not defeat the full and unconditional nature of the guarantee.

- The guarantor's obligation under the guarantee is limited to ''the maximum amount that can be guaranteed without constituting a fraudulent conveyance or fraudulent transfer under applicable insolvency laws.''
- The guarantee is enforceable ''to the fullest extent permitted by law.''

The following savings clauses would defeat the full and unconditional nature of the guarantee.

- The guarantee is enforceable ''up to $XX.''
- The guarantor guarantees the indebtedness ''up to $XX.''
- The guarantee is ''limited to $XX in order to prevent the guarantor from violating applicable fraudulent conveyance or transfer laws.''
- The guarantee is enforceable ''up to XX% of the guarantor's current assets.''
- The guarantee is ''limited to XX% of the guarantor's current assets in order to prevent the guarantor from violating applicable fraudulent conveyance or transfer laws.''
- The guarantee is enforceable ''so long as it would not result in the guarantor having less than $XX in net assets [or other financial measure].''

iii. A Guarantee Can Be Full and Unconditional Even if it Has Different Subordination Terms Than the Guaranteed Securities

A guarantee can be full and unconditional despite different subordination terms between the

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Division of Corporation Finance. In its consideration of these requests, the staff will consider the principles set forth in this release regarding the significance of the 100%-owned definition.

[30] Comment letter of Sullivan & Cromwell (May 4, 1999).

[31] *See* Rule 3–10(h)(2).

[32] Comment letters of Latham & Watkins (July 15, 1999, and July 6, 2000).

guaranteed security and the guarantee.[33] For example, a parent company's guarantee can be full and unconditional even if the subsidiary's debt obligation ranks senior to all other debt of that subsidiary and the parent company's guarantee ranks junior to other debt obligations of the parent company. Although different subordination terms mean security holders have different rights in the priority of payment with respect to the issuer and the guarantor, both the issuer and the guarantor remain fully liable to holders for all amounts due under the guaranteed security.

One commenter agreed that subordination terms among the guaranteed security and the guarantees should not affect the full and unconditional analysis.[34] However, that commenter felt that condensed consolidating financial information should be expanded in these cases to require separate columns grouping the guarantors by priority position or subordination. We are not expanding the condensed consolidating requirements as suggested because we believe that the condensed consolidating financial information provides the appropriate level of information to investors.

2. Rule 3–10(b) Through (f)

a. Preliminary Conditions to the Availability of Rule 3–10(b) Through (f)

If either the guarantee is not full and unconditional or the subsidiary is not 100% owned by its parent company, then modified financial information would not be allowed. Our discussion of amended Rule 3–10 in subsections b. through f., below, assumes that each of these conditions has been met.

b. Finance Subsidiary Issuer of Securities Guaranteed by its Parent Company Only

We proposed to amend Rule 3–10 to codify SAB 53's treatment of finance subsidiary issuers of securities that are guaranteed by the parent company. As adopted, paragraph (b) of Rule 3–10 provides that subsidiary issuers would not be required to include any financial information if:

- The subsidiary is a finance subsidiary; [35]
- The parent company of the subsidiary issuer guarantees the securities;
- No other subsidiary of the parent company guarantees the securities;
- The parent company's financial statements are filed for the periods specified by Rules 3–01 and 3–02 of Regulation S–X; [36] and
- The parent company's financial statements include a footnote stating that the issuer is a 100%-owned finance subsidiary of the parent company and the parent company has fully and unconditionally guaranteed the securities.

In response to comments, we have added a note to paragraph (b) stating that if a subsidiary issuer satisfies the requirements of this paragraph but for the fact that it co-issued the securities, jointly and severally, with its parent company, the parent company may present its financial information with respect to the subsidiary as paragraph (b) permits.

One commenter asked us to clarify what happens when a finance subsidiary ceases to meet the definition of finance subsidiary.[37] At that time, the subsidiary should be treated as an operating subsidiary. The parent company is not required to amend any reports for periods before the subsidiary stopped being a finance subsidiary. The parent company must present condensed consolidating financial information for the subsidiary when the subsidiary ceases to be a finance subsidiary. That is, the parent company must present condensed consolidating financial information for the operating subsidiary in the Exchange Act report for the period in which the subsidiary stopped being a finance subsidiary.

In an offering of securities that is registered under the shelf registration system,[38] if the finance subsidiary ceases to meet the definition of finance subsidiary, the registration statement must be amended to include the appropriate financial information before any further offers may be made. Ordinarily, under the shelf registration system, this information would have to be included in the registration statement through a post-effective amendment. However, offerings that are registered on Form S–3 [39] could satisfy this requirement by filing the financial information on a Form 8–K [40] that is incorporated by reference.[41]

c. Operating Subsidiary Issuer of Securities Guaranteed by its Parent Company Only

We proposed to amend Rule 3–10 to address specifically the structure where the parent company guarantees the securities issued by a subsidiary that is not a finance subsidiary. SAB 53 permitted the parent company's financial statement footnotes to include summarized financial information regarding the operating subsidiary issuer. Consistent with our view that condensed consolidating financial information is more appropriate, we are adopting paragraph (c) of Rule 3–10 to provide that these issuers need not include separate financial statements if:

- The parent company guarantees the securities;
- No subsidiary of the parent company guarantees the securities;
- The parent company's financial statements are filed for the periods specified by Rules 3–01 and 3–02 of Regulation S–X; and
- the parent company's financial statement footnotes include condensed consolidating financial information for the same periods with a separate column for:
  - The parent company;
  - The subsidiary issuer;
  - Any other subsidiaries of the parent on a combined basis;
  - Consolidating adjustments; and
  - The total consolidated amounts.

We are adopting the paragraph as proposed with the addition of three notes. First, we have added a note stating that the condensed consolidating financial information may be omitted if:

- The parent company has no independent assets or operations; [42]
- Any subsidiaries other than the subsidiary issuer are minor; [43] and

[33] *See* Williams Scotsman, Inc. (March 19, 1998).

[34] Comment letter of PricewaterhouseCoopers (May 4, 1999).

[35] Rule 3–10(h)(7) states that a subsidiary is a finance subsidiary if ''it has no assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the security being registered and any other securities guaranteed by its parent company.''

[36] 17 CFR 210.3–01 and 17 CFR 210.3–02. Rule 3–10(a)(3) states that foreign parent companies should look to Item 8.A of Form 20–F to determine the periods for which financial statements are required.

[37] Comment letter of Arthur Andersen (May 4, 1999).

[38] *See* Securities Act Rule 415 [17 CFR 230.415].

[39] 17 CFR 239.13.

[40] 17 CFR 249.308.

[41] Similarly, offerings that are registered on Form F–3 [17 CFR 239.33] could satisfy this requirement by filing the financial information on a Form 6–K [17 CFR 249.306] that is incorporated by reference.

[42] Rule 3–10(h)(5) states that, for purposes of Rule 3–10, a parent company has no independent assets or operations if ''its total assets, revenues, income from continuing operations before income taxes, and cash flows from operating activities (excluding amounts related to its investment in its consolidated subsidiaries) are each less than 3% of the corresponding consolidated amounts.''

[43] Rule 3–10(h)(6) states that, for purposes of Rule 3–10, ''a subsidiary is *minor* if its total assets, stockholders' equity, revenues, income from continuing operations before income taxes, and cash flows from operating activities are each less than 3% of the parent company's corresponding consolidated amounts.'' A note to this definition indicates that when considering a group of subsidiaries, the definition applies to each

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• The parent company's financial statements include a footnote stating that the parent company has no independent assets or operations, the guarantee is full and unconditional and any subsidiaries other than the subsidiary issuer are minor.

This note was added to the proposed rule based on comments we received suggesting that when the parent company is a holding company and the subsidiary issuer is the only subsidiary other than minor subsidiaries, the subsidiary issuer should be treated like a finance subsidiary. We agree that under these circumstances the consolidated financial statements, when combined with the required narrative information, provide substantially the same information as condensed consolidating financial information. Thus, the condensed consolidating financial information need not be presented.

Second, we have added a note stating that the separate column for other subsidiaries is not required when the parent company has independent assets or operations, but the other subsidiaries are minor.

Third, we have added a note stating that if a subsidiary issuer satisfies the requirements of this paragraph but for the fact that it co-issued the securities, jointly and severally, with its parent company, the parent company may present its financial information with respect to the subsidiary as paragraph (c) permits.

d. Subsidiary Issuer of Securities Guaranteed By its Parent Company and One or More Other Subsidiaries of That Parent Company

We proposed to codify the staff's position regarding the structure where a subsidiary issues securities and both its parent company and one or more other subsidiaries of that parent company are guarantors. As adopted, paragraph (d) of Rule 3–10 provides that these subsidiary issuers and subsidiary guarantors need not include separate financial statements if:

• The guarantees are joint and several;

• The parent company's financial statements are filed for the periods specified by Rules 3–01 and 3–02 of Regulation S–X; and

• The parent company's financial statement footnotes include condensed consolidating financial information for the same periods with a separate column for

• The parent company;

• the subsidiary issuer;

• the guarantor subsidiaries on a combined basis;

• any other subsidiaries on a combined basis;

• consolidating adjustments; and

• the total consolidated amounts.

This paragraph applies in the same manner regardless of whether the issuer is a finance subsidiary or an operating subsidiary.

We are adopting this paragraph as proposed with the addition of four notes. First, we added a note stating that the separate column for other subsidiaries is not required when those other subsidiaries are minor.

Second, we added a note stating that if a subsidiary issuer satisfies the requirements of this paragraph but for the fact that it co-issued the securities, jointly and severally, with its parent company, the parent company may present its financial information with respect to the subsidiaries as paragraph (d) permits.

Third, we added a note addressing guarantees that are not joint and several. That note states that

• if

• there is one subsidiary guarantor and that subsidiary's guarantee is not joint and several with the parent company's guarantee, or

• there is more than one subsidiary guarantor and any of the subsidiary guarantees is not joint and several with the guarantees of the parent company and the other subsidiaries,

• Then

• each subsidiary guarantor whose guarantee is not joint and several need not include separate financial statements, but

• the condensed consolidating financial information must include a separate column for each subsidiary guarantor whose guarantee is not joint and several.

Fourth, we added a note addressing the situation when the parent company has no independent assets or operations, the subsidiary issuer is a finance company, and all of the parent company's other subsidiaries guarantee the securities on a full and unconditional and joint and several basis. In that situation, the consolidated financial statements, when combined with the required narrative information, provide substantially the same information as condensed consolidating financial information. Thus, the condensed consolidating financial information need not be presented.

e. Single Subsidiary Guarantor of Securities Issued By Its Parent Company

We proposed to codify the staff's positions regarding the structure where a parent company issues securities and one of its subsidiaries guarantees those securities. As adopted, paragraph (e) of Rule 3–10 provides that the subsidiary guarantor need not include separate financial statements if:

• No other subsidiary of that parent company guarantees the securities;

• The parent company's financial statements are filed for the periods specified by Rules 3–01 and 3–02 of Regulation S–X; and

• The parent company's financial statement footnotes include condensed consolidating financial information for the same periods with a separate column for

• the parent company;

• the subsidiary guarantor;

• any other subsidiaries of the parent on a combined basis;

• consolidating adjustments; and

• the total consolidated amounts.

This paragraph applies in the same manner regardless of whether the subsidiary guarantor is a finance subsidiary or an operating subsidiary.

We are adopting this paragraph as proposed with the addition of three notes. First we have added a note stating that the condensed consolidating financial information may be omitted if:

• The parent company has no independent assets or operations;

• Any subsidiaries other than the guarantor are minor; and

• The parent company's financial statements include a footnote stating that the parent company has no independent assets or operations, the guarantee is full and unconditional and any non-guarantor subsidiaries are minor.

Second, we added a note stating that the separate column for other subsidiaries is not required when the parent company has independent assets or operations, but the other subsidiaries are minor.

Third, we added a note stating that this paragraph does not apply if the subsidiary co-issued the securities, jointly and severally, with its parent company. Instead,

• If the subsidiary is a finance subsidiary, paragraph (b) would apply; and

• If the subsidiary is an operating subsidiary, paragraph (c) would apply.

We added this note to eliminate any potential confusion regarding which paragraph applies in co-issuer situations.

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subsidiary in that group individually and to all subsidiaries in that group in the aggregate.

f. Multiple Subsidiary Guarantors of Securities Issued By Their Parent Company

We proposed to codify the staff's position for the structure when a parent company issues securities and more than one of its subsidiaries guarantees the securities. As adopted, paragraph (f) of Rule 3–10 provides that the subsidiary guarantors need not include separate financial statements if:

- The guarantees are joint and several;
- The parent company's financial statements are filed for the periods specified by Rules 3–01 and 3–02 of Regulation S–X; and
- The parent company's financial statement footnotes include condensed consolidating financial information for the same periods with a separate column for
- the parent company;
- the subsidiary guarantors on a combined basis;
- any other subsidiaries on a combined basis;
- consolidating adjustments; and
- the total consolidated amounts.

We are adopting this paragraph as proposed, with the addition of three notes. First, we have added a note stating that the condensed consolidating financial information may be omitted if:

- The parent company has no independent assets or operations;
- Any subsidiaries other than the subsidiary guarantors are minor; and
- The parent company's financial statements include a footnote stating that the parent company has no independent assets or operations, the guarantees are full and unconditional and joint and several, and any non-guarantor subsidiaries are minor.

Second, we added a note stating that the separate column for other subsidiaries is not required when the parent company has independent assets or operations, but the other subsidiaries are minor.

Third, we added a note addressing guarantees that are not joint and several. That note states that

- If
- any of the subsidiary guarantees is not joint and several with the guarantees of the other subsidiaries,
- Then
- each subsidiary guarantor whose guarantee is not joint and several need not include separate financial statements, but
- the condensed consolidating financial information must include a separate column for each subsidiary guarantor whose guarantee is not joint and several.

3. Condensed Consolidating Financial Information Required By Rule 3–10(c) Through (f)

Under today's amendments to Rule 3–10, a subsidiary may rely on one of the exceptions in paragraphs (c) through (f) if it is otherwise eligible for that exception and the parent company's financial statements include a footnote presenting condensed consolidating financial information.

a. Reasons for Requiring Condensed Consolidating Financial Information Instead of Summarized Financial Information

Under SAB 53, subsidiary issuers were permitted to include summarized financial information as described in Rule 1–02(bb) of Regulation S–X.[44] Summarized financial information originally was intended only to inform investors about a registrant's equity investments in unconsolidated affiliates. The summarized financial information shows the general, indirect effect of the subsidiaries on their parent company's financial condition. This type of financial information is appropriate when the investment decision is based solely on the financial condition of the parent company.

However, in SAB 53, the staff did not contemplate the widespread use of summarized financial information as the primary financial information for assessing the creditworthiness of a subsidiary guarantor. The staff also did not contemplate more complex guarantee structures where investors must assess the subsidiary's financial condition more completely and independently of its parent company and other subsidiaries of its parent company. Summarized financial information is inadequate for this purpose. For example, although cash flow information is significant in assessing creditworthiness, summarized financial information includes no cash flow information.

Further, summarized financial information, as the staff recognized in its application of SAB 53, raised the question of how to deal with multiple guarantors. Many structures presented to the staff involved a subsidiary issuer, a parent company guarantor, multiple subsidiary guarantors, and multiple subsidiaries that are not guarantors. Other structures involved more than 100 subsidiary guarantors. A strict application of SAB 53 in that situation would have required more than 100 sets of summarized financial information. Not only would that disclosure have been burdensome for the registrant to provide, it is unlikely to have been useful to investors.

Through interpretive requests and the review and comment process, the staff began to rely on the inclusion of condensed consolidating financial information in lieu of summarized financial information in most situations.[45] Condensed consolidating financial information requires the columnar presentation of each category of parent and subsidiary as issuer, guarantor, or non-guarantor.[46]

In today's amendments to Rule 3–10, we are requiring condensed consolidating financial information as a condition to omitting separate financial statements. We are requiring condensed consolidating financial information because it clearly distinguishes the assets, liabilities, revenues, expenses, and cash flows of the entities that are legally obligated under the indenture from those that are not.[47] Furthermore, condensed consolidating financial information provides the same level of detail about the financial position, results of operations, and cash flows of subsidiary issuers and subsidiary guarantors that investors are accustomed to obtaining in interim financial statements of a registrant. It also facilitates analysis of trends affecting subsidiary issuers and subsidiary guarantors and relationships among the various components of a consolidated organization.

b. Comments Regarding Condensed Consolidating Financial Information

We requested comment on whether condensed consolidating financial information was the proper level of disclosure. The commenters generally expressed support for the proposed

[44] The staff expanded this relief to subsidiary guarantors in Anheuser-Busch Companies, Inc. (April 2, 1987).

[45] The staff required condensed consolidating financial information in all situations except those specifically addressed in SAB 53—specifically, those where (a) there was a single subsidiary issuer or, where there was a parent issuer and a subsidiary guarantee, that guarantee was provided by either a single subsidiary or all subsidiaries; or (b) the issuer was a finance subsidiary and the parent was the sole guarantor. The staff first accepted condensed consolidating financial information in connection with its case-by-case review of Securities Act registration statements. Consistent with the earlier development of SAB 53 interpretation, the staff applied the same analysis to no-action requests relating to Exchange Act reporting. *See, e.g.,* Chicago & North Western Acquisition Corp. (February 6, 1990); EPIC Properties, Inc. (March 13, 1992).

[46] The staff permits subsidiary guarantors to combine financial information in one column if their guarantees are joint and several.

[47] Summarized financial information may obscure these distinctions, particularly if subsidiary guarantors themselves have consolidated operating subsidiaries that are not guarantors.

requirement for condensed consolidating financial information. One commenter suggested an alternative to condensed consolidating financial information where summarized financial information would have been permitted before today's amendments.[48] That commenter suggested that we expand the summarized financial information specified by Rule 1–02(bb) to include additional line items and cash flow information.

Another commenter expressed the view that condensed consolidating financial information results in a presentation that is inconsistent with other financial statement requirements of Regulation S–X because it requires parent companies to present investments in all subsidiaries, and subsidiary issuer and subsidiary guarantor columns to present investments in non-guarantor subsidiaries, on an unconsolidated basis.[49] That commenter believed that the distinction between a 100%-owned subsidiary issuer or subsidiary guarantor and a 100%-owned non-guarantor subsidiary should not affect an investor's assessment of the parent company's ability to satisfy the debt obligations. The commenter also believed that condensed consolidating financial information is unduly burdensome to prepare and does not fully depict the ''structural subordination'' of an issuer's registered classes of guaranteed debt to other obligations of non-guarantor subsidiaries in many debt structures. Accordingly, the commenter proposed that the summarized financial information approach, expanded to include cash flow information, be adopted for all issuers and guarantors who exhibit evidence of the ability to satisfy their obligations and are in good financial condition. This suggestion would require a merit determination each time financial information is presented.

For the reasons discussed above, we are adopting the condensed consolidating financial information requirement as proposed. We continue to believe that condensed consolidating financial information provides the most meaningful presentation to permit investors to evaluate the ability to pay of those entities that are legally obligated under the debt and the guarantee(s). We also believe the approach is more adaptable to new and complex debt instruments and structures.

In our view, summarized financial information, even if modified to include additional data, provides less complete information about subsidiary issuers and subsidiary guarantors and is less flexible than condensed consolidating financial information. It also would be difficult to develop and administer a meaningful and practical difference in presentation requirements based on the financial condition of the subsidiary or parent company across the wide range of debt instruments, issuers and industries. Further, it seems that the likely result of the summarized financial information approach in complex structures would be the inclusion of multiple sets of summarized financial information. The relationship of the summarized data to the consolidated financial statements of the parent would likely be unclear, and the assets and operations of particular subsidiary issuers or subsidiary guarantors would likely be duplicated by inclusion in multiple sets of data. In large part, these same factors led the staff to develop the condensed consolidating financial information approach a number of years ago.

4. Securities to Which Rule 3–10 Applies

a. Rule 3–10(a) Requires Separate Financial Statements for Each Issuer of Registered Guaranteed Securities and Each Guarantor of Registered Securities

Rule 3–10(a) requires, as a general rule, separate financial statements for ''every issuer of a registered security that is guaranteed and every guarantor of a registered security.'' [50] This requirement applies regardless of:

- The relationship between the issuer and the guarantor(s);
- The nature of the guaranteed security; or
- Whether the guarantee is full and unconditional.

b. Guaranteed Securities for Which Paragraphs (b) Through (f) of Rule 3–10 May Provide an Exception to the Requirement of Rule 3–10(a)

We have adopted five exceptions to the general rule of Rule 3–10(a) in recognition that there are specific types of securities, guarantees, and related parties for which modified financial information is appropriate. We are providing, as proposed, that the modified financial information permitted by paragraphs (b) through (f) be available only for guaranteed debt and guaranteed preferred securities that have payment terms that are substantially the same as debt.[51] Under this standard, the payment terms of the preferred securities must mandate redemption and/or dividend payments.[52]

i. The Modified Financial Information Permitted by Paragraphs (b) Through (f) is Available Only for Guaranteed Debt and Debt-Like Securities

The modified financial information permitted by paragraphs (b) through (f) will be available only for guaranteed debt and debt-like instruments. Neither the form of the security nor its title will determine the availability of those paragraphs. Instead, the substance of the obligation created by the security will be determinative. The characteristics that identify a guaranteed security as debt or debt-like for this purpose are:

- The issuer has a contractual obligation to pay a fixed sum at a fixed time; and
- Where the obligation to make such payments is cumulative, a set amount of interest must be paid.

The fact that disbursements on the security may be called ''payments,'' ''distributions,'' or ''dividends'' rather than ''interest'' or that holders are entitled to ''liquidation'' or ''mandatory redemption'' rather than ''principal'' payments does not defeat their status as debt or debt-like for this purpose. Similarly, the fact that a security is called ''preferred stock'' or ''debt'' does not bring it within the rule if the

[48] Comment letter of KPMG LLP (May 4, 1999).

[49] Comment letters of Time Warner, Inc. (July 8, 1999 and August 10, 1999).

[50] One commenter asked us to clarify the application of Rule 3–10 when the guarantee does not run to the benefit of the debt holders and, thus, would not be a ''security'' itself. *See* Comment letter of PricewaterhouseCoopers (May 4, 1999). That commenter also asked that the rule be expanded to cover situations in which the staff historically has asked for financial disclosures by guarantors or credit enhancers even when the guarantee that is not a security or the credit enhancement does not run directly to the holders of the related security.

Typically, in those situations, the issuer of the guarantee or provider of the credit enhancement does not incur a Rule 3–10(a) financial statement obligation or a Section 15(d) reporting obligation as a result of the guarantee or the credit enhancement. Nevertheless, when a party provides such a guarantee or credit enhancement, its financial information often is material to investors in the related security. If that information is material, the staff may ask that the guarantor or credit enhancer's financial statements be disclosed. These situations are beyond the scope of today's initiative. We have not amended Rule 3–10 in response to this comment and today's amendments do not affect the staff's practices with regard to these types of guarantees and credit enhancements.

[51] These securities include trust preferred securities. We discuss these securities later in this section.

[52] Preferred securities normally carry very limited voting rights, such as the right of holders to vote on matters affecting their rights as shareholders or business combinations. The right to elect directors is normally conferred only when the issuer has failed to declare or pay a dividend required by the security.

security does not bear the necessary characteristics of debt.

The phrase ''set amount of interest'' is not intended to mean ''fixed amount of interest.'' The modified financial information permitted by paragraphs (b) through (f) is available for floating and adjustable rate securities, as well as indexed securities, as long as the payment obligation is set in the debt instrument and can be determined from objective indices or other factors that are outside the discretion of the obligor.

In the following sections, we discuss two issues that arise because paragraphs (b) through (f) of Rule 3–10 are available for debt-like securities. Specifically, we discuss:

- When a guarantee of preferred securities is full and unconditional for purposes of Rule 3–10; and
- The application of Rule 3–10 to ''trust preferred securities.''

(A) Full and Unconditional Guarantee of Preferred Securities

For the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10 to be available for guaranteed preferred securities, the guarantor must fully and unconditionally guarantee all of the issuer's payment obligations under the certificate of designations or other instrument that governs the preferred securities. The guarantor must guarantee the payment, when due, of:

- All accumulated and unpaid dividends that have been declared on the preferred securities out of funds legally available for the payment of dividends;
- The redemption price, on redemption of the preferred securities, including all accumulated and unpaid dividends; and
- Upon liquidation of the issuer of the preferred securities, the aggregate stated liquidation preference and all accumulated and unpaid dividends, whether or not declared, without regard to whether the issuer has sufficient assets to make full payment as required on liquidation.

Some guarantees of preferred securities limit the guarantor's redemption and liquidation payments to the amount of funds or assets that are legally available to the issuer of the preferred securities. These guarantees would not be full and unconditional. For example, guarantees that contain the following provisions would not be full and unconditional.

- The guarantor guarantees, on redemption of the preferred securities, the redemption price, including all accumulated and unpaid dividends, from funds legally available therefor to the issuer.
- Upon liquidation of the issuer of the preferred securities, the guarantor agrees to pay the lesser of:
- The aggregate stated liquidation preference and all accumulated and unpaid dividends, whether or not declared; and
- The amount of assets of the issuer of the preferred securities legally available for distribution to holders of the preferred stock in liquidation.

(B) Trust Preferred Securities

Trust preferred securities generally are issued by a special purpose business trust created by its parent company.[53] The trust exists only to issue the preferred securities and hold debt securities issued by its parent company.[54] Payment obligations of the trust are ensured not by a single agreement called a guarantee, but through several agreements and by the terms of the debt securities that the trust holds. The agreements normally include a guarantee and an expense undertaking from the parent company, the trust indenture for the debt securities the trust holds, and the trust declaration of the trust itself. In applying SAB 53 to these securities, the staff agreed with the view that the bundle of rights provided by these agreements and the debt securities held by the trust, usually called the ''back-up undertakings,'' is the equivalent of a ''full and unconditional'' guarantee of the trust's payment obligations.

Based on the same reasoning as the staff has applied to these securities, we believe that the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10 should be available for these securities where:

- Holders are entitled to receive periodic payments that are cumulative if unpaid and holders are entitled to receive a fixed liquidation amount; [55] and
- The ''back-up undertakings'' place the investor in the same position as if the parent company had fully and unconditionally guaranteed the trust's payment obligations on the preferred securities.[56]

ii. Availability of Paragraphs (b) Through (f) to Convertible Debt or Debt-Like Securities

Two commenters addressed whether the modified financial information permitted by paragraphs (b) through (f) should be available for guaranteed debt that is convertible into equity of the parent company, other subsidiaries, or other companies.[57] The modified financial information permitted by paragraphs (b) through (f) will be available for guaranteed convertible securities only where those securities are convertible into equity securities of the parent company.[58] If the securities were convertible into securities of a company other than the parent company, the subsidiary issuer would not be considered 100% owned.

c. Availability of Modified Financial Information for Guaranteed Securities Not Described in This Release

The modified financial information permitted by paragraphs (b) through (f) of Rule 3–10 will not be available for every offering of a guaranteed security; they are intended to address only those situations where we are certain that modified financial information is appropriate. We do not believe that, as one commenter suggested, those paragraphs should be available broadly for ''any other security if the amounts payable or the other obligations owing to the holder thereunder will not depend on the financial health, value, or performance of the subsidiary issuer or subsidiary guarantor.'' [59] However, there may be unique factual situations in which modified financial information would be appropriate, even though those situations are not identified in paragraphs (b) through (f) or otherwise described in this release. In these rare situations, we encourage the issuer and guarantor(s) to contact the Division of Corporation Finance to discuss the filing relating to those securities.[60] Due

[53] Other names for these securities include ''monthly income preferred securities'' or ''quarterly income preferred securities.'' These securities generally are sold under proprietary names such as MIPs, QUIPs, or TOPRs.

[54] While these securities typically are issued by a business trust, they also may be issued by a limited partnership or a limited liability corporation.

[55] As with other debt-like securities, the modified financial information permitted by paragraphs (b) through (f) would be available only where the failure to make the periodic payment would have the same result as a default on a required payment of interest on a debt security.

[56] Ordinarily, the issuers of these securities are finance subsidiaries with no operations or assets other than those in connection with the offering of the securities. Therefore, they should look to paragraph (b) of Rule 3–10.

[57] Comment letters of PricewaterhouseCoopers (May 4, 1999) and Sullivan & Cromwell (May 4, 1999).

[58] *See, e.g.,* World Access, Inc. NACT Telecommunications, Inc. (October 28, 1998) and PNC Bank Corp., PNC Bancorp, Inc. (April 1, 1996).

[59] Comment letter of Sullivan & Cromwell (May 4, 1999).

[60] Similarly, these issuers and guarantors may either apply to the Commission under Section 12(h) of the Exchange Act for an exemption from the Exchange Act reporting requirements or request a

Continued

to the specificity and breadth of today's amendments and the guidance provided in this release and the appendices, we anticipate that these requests will be infrequent.

5. Recently Acquired Subsidiary Issuers and Subsidiary Guarantors

A special issue in the financial statement disclosure for issuers and guarantors is the treatment of recently acquired subsidiary issuers and subsidiary guarantors. Because these subsidiaries generally are not included in the consolidated results of the parent company for all periods, condensed consolidating financial information does not effectively present all material financial information to investors.[61]

We proposed to require pre-acquisition financial statements for significant, recently acquired subsidiary issuers and subsidiary guarantors until the condensed consolidating financial information reflects adequately their cash flows and results of operations. These separate audited financial statements would be for the subsidiary's most recent fiscal year preceding the acquisition. Unaudited financial statements also would have to be filed for any interim period specified by Rules 3–01 and 3–02 of Regulation S–X.

As proposed, this treatment would have applied to any recently acquired subsidiary issuer or subsidiary guarantor:

- That has not been included in the audited consolidated results of its parent company for at least nine months of the most recent fiscal year; and
- Whose net book value or purchase price, whichever is greater, equals 20% or more of the shareholders' equity of the parent company on a consolidated basis.[62]

We heard from several commenters on this proposal. While they generally supported the proposal, several commenters questioned the relevance and practicability of the proposed measure of significance.[63] A number of commenters suggested that significance be measured by comparison to the amount of the securities being registered.[64] One commenter noted that this measure would focus ''on the assets and cash flows of the recently acquired guarantor which will be available to satisfy the registered debt and the amount of credit enhancement the subsidiary is adding to the arrangement.'' [65] Other commenters noted anomalies that could result if the parent company had negative shareholders' equity.[66] For example, a parent company's large deficit could render an acquired guarantor insignificant under the proposed test, even though the guarantor may constitute the primary source of cash flows for repayment of the debt. These commenters also noted that comparison to the securities being registered is consistent with current staff practice.

We are adopting the treatment of recently acquired subsidiaries largely as proposed. However, given the comments we received on the significance measure, we have revised that measure. As adopted, the rule calls for significance to be measured by comparing the net book value or purchase price of the subsidiary to the principal amount of the securities being registered.[67]

The rule requires pre-acquisition financial statements in Securities Act registration statements only. Those financial statements are not required in Exchange Act periodic reports.[68]

Commenters also requested that we clarify various matters regarding the implementation and operation of the paragraph relating to recently acquired subsidiaries. These include:

- Whether individually insignificant acquired guarantors must be aggregated;
- Whether the form of the acquisition affects the requirement for financial statements;
- Whether, and when, financial statements are required for very recently acquired, or not yet acquired, guarantors; and
- Whether use of the pooling or purchase method of accounting affects the financial statements to be provided under Rule 3–10(g).

Many of these issues are similar to issues currently faced by registrants with significant acquired businesses outside the context of a registered offering of guaranteed debt securities. The staff addresses those issues through its normal practice. In these situations, we encourage the issuer and guarantor(s) to contact the Division of Corporation Finance to discuss the filing relating to those securities.

While some of the requested guidance is outside the scope of today's rule-making, we agree that implementation guidance on a number of these matters would be useful. We have included Appendix B to illustrate the operation of the paragraph relating to recently acquired subsidiaries and provide guidance on various implementation issues.

6. Definitions in Rule 3–10

We proposed to define the following four terms in paragraph (h) of Rule 3–10: ''wholly owned,'' ''full and unconditional,'' ''annual report,'' and ''quarterly report.'' We are adopting as proposed the definitions of ''full and unconditional,'' ''annual report,'' and ''quarterly report.'' [69]

As noted previously, we have made two revisions to the proposed definition of ''wholly owned,'' including changing the defined term to ''100% owned.'' [70]

In response to comments, we also have added the following definitions.

- A parent company has no independent assets or operations if each of its total assets, revenues, income from continuing operations before income taxes, and cash flows from operating activities (excluding amounts related to its investment in its consolidated subsidiaries) is less than 3% of the corresponding consolidated amount.[71]
- A subsidiary is minor if each of its total assets, stockholders' equity, revenues, income from continuing operations before income taxes, and cash flows from operating activities is less than 3% of the parent company's corresponding consolidated amount. This definition applies to each subsidiary individually and to all subsidiaries in the aggregate.[72]

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no-action letter from the Division of Corporation Finance.

[61] Before today's amendments, Rule 3–10 and SAB 53 provided no relief for a subsidiary issuer or subsidiary guarantor for periods before its acquisition. Literal application of Rule 3–10 would have required three years of audited financial statements, regardless of the significance of the acquired subsidiary. The staff has permitted registrants to apply the significance tests then in Rule 3–10(b) by analogy, but that practice provided limited relief and created a number of implementation issues.

[62] This significance test would be computed by using amounts for the subsidiary as of the most recent fiscal year end before the acquisition.

[63] *See, e.g.*, comment letters of Arthur Andersen (May 4, 1999), Sullivan & Cromwell (May 4, 1999), PricewaterhouseCoopers (May 4, 1999), KPMG LLP (May 4, 1999) and Ernst & Young (May 11, 1999).

[64] *See, e.g.*, comment letters of PricewaterhouseCoopers (May 4, 1999) and KPMG LLP (May 4, 1999).

[65] Comment letter of PricewaterhouseCoopers (May 4, 1999).

[66] *See, e.g.*, comment letter of Ernst & Young (May 4, 1999).

[67] *See* Rule 3–10(g)(1)(ii).

[68] *See* Instruction 4 to Rule 3–10(g)(1).

[69] *See* Rule 3–10(h)(2), (h)(3), and (h)(4).

[70] *See* Rule 3–10(h)(1). We discuss the definition of 100% owned in Section III.A.1.a.—''The meaning of 100% owned.''

[71] *See* Rule 3–10(h)(5).

[72] *See* Rule 3–10(h)(6). This 3% test has been applied by the staff in the context of condensed consolidating financial information under SAB 53. In no-action letters under SAB 53, the staff has referred to subsidiaries falling below the 3% test as ''inconsequential.'' To avoid confusion with uses of the term ''inconsequential'' in other parts of the federal securities laws, for example, in Section 10A(b)(1)(B) of the Exchange Act [15 U.S.C. 78j–

• A subsidiary is a finance subsidiary if it has no assets, operations, revenues, or cash flows other than those related to the issuance, administration, and repayment of the security being registered and any other securities guaranteed by its parent.[73]

• A subsidiary is an operating subsidiary if it is not a finance subsidiary.[74]

For purposes of Rule 3–10, the parent company is the company that:

• Is an issuer or guarantor of the subject securities; [75]

• Is, or as a result of the subject Securities Act registration statement will be, an Exchange Act reporting company; and

• Owns 100%, directly or indirectly, of each subsidiary issuer and/or subsidiary guarantor of the subject security.

The identity of the parent company will vary based on the particular corporate structure. Instead of a definition of parent company in Rule 3–10, which would fail to account for these variations, we have included a number of examples in Appendix C that explain the term.

1(b)(1)(B)], we are using the term ''minor.'' The 3% test is a numerical threshold for determining when separate presentation of columnar information for specific subsidiaries may be omitted from condensed consolidating financial information under Rule 3–10. The 3% test is not, and should not be construed as, a standard of general materiality for the preparation of consolidated financial statements.

[73] *See* Rule 3–10(h)(7).

[74] *See* Rule 3–10(h)(8).

[75] It would not be appropriate under Rule 3–10 to file, in substitution for the financial statements of the parent company, financial statements of an entity that files Exchange Act reports but is not an issuer or guarantor of the securities being registered. *See* Note to Rule 3–10(a)(2). As an illustration, assume the following:

• A parent company with no independent assets or operations issues debt securities that are guaranteed by one or more of its subsidiaries, and

• The parent company is a 100%-owned subsidiary of an entity whose common shares are registered under Section 12 of the Exchange Act, but that entity is not a co-issuer or guarantor of the debt securities.

In this situation, the consolidated financial statements of the parent company must be filed for modified financial information of the subsidiary guarantors to be permitted by paragraphs (b) through (f) of Rule 3–10. The financial statements of the Section 12-registered entity do not meet the conditions in paragraphs (b) through (f) of Rule 3–10, even if the financial statements of that entity are virtually identical to those of the parent company, because the security holders cannot enforce payment of the obligation against that entity. Similarly, the financial statements of a subsidiary that is not an issuer or guarantor of the securities cannot be substituted for those of the parent company. This treatment is consistent with staff practice under SAB 53.

7. Instructions for Condensed Consolidating Financial Information Under Rule 3–10

To help ensure meaningful, consistent presentation of the condensed consolidating financial information, we proposed instructions on how to prepare the financial information. We proposed 13 instructions. We have made seven changes to those proposals.

• We combined proposed paragraphs (i)(1) and (i)(2) into one instruction, reflected in paragraph (i)(1).

• One commenter suggested that we clarify the accounting basis to be used for recently acquired entities included in the guarantor/non-guarantor columns in the condensed consolidating financial information. In response to this suggestion, we created new paragraph (i)(4) to clarify that the basis must be ''pushed down'' to the applicable subsidiary columns to the extent that push down would be required or permitted in separate financial statements of the subsidiary.[76]

• We revised paragraph (i)(5) to clarify which investments in subsidiaries must be presented under the equity method in the subsidiary issuer or subsidiary guarantor columns.

• We added paragraph (i)(6) to clarify that separate columns are required for subsidiary issuers or subsidiary guarantors that are not 100% owned, whose guarantees are not full and unconditional, or whose guarantees are not joint and several with the guarantees of other subsidiaries.

• We added the words ''subsidiary issuers and'' into paragraph (i)(10) to reflect that both subsidiary issuers and subsidiary guarantors must comply with Rule 4–08(e)(3) of Regulation S–X.[77]

• We combined proposed paragraphs (i)(10), (i)(11), and (i)(12) into one instruction, paragraph (i)(11).

• We added paragraph (i)(12) to clarify that U.S. GAAP reconciling information for the subsidiaries need not duplicate information included elsewhere in the reconciliation of the parent company's consolidated financial information.

Other than these seven changes, we have adopted the instructions to Rule 3–10 as proposed.

B. Item 310 of Regulation S–B

We proposed to amend Item 310 of Regulation S–B to require small business issuers to include the same financial information as required by proposed Rule 3–10. One commenter responded to our request for comment on this proposal.[78] That commenter believed that the standards for large and small businesses should be the same because the likely higher cost to a small business of providing the information is balanced by the likely greater significance of that information. We are adopting Item 310 of Regulation S–B as proposed.[79]

[76] Staff Accounting Bulletin 54 discusses ''push down'' accounting. *See* Securities Act Release No. SAB 54 (Nov. 3, 1983) [48 FR 51769].

[77] 17 CFR 210.4–08(e)(3). Rule 4–08(e)(3) relates to limitations on the payment of dividends.

[78] Comment letter of KPMG LLP (May 4, 1999).

[79] One commenter asked us to clarify the application of today's amendments to offerings that are exempt under Regulation A. *See*, comment letter of Arthur Andersen (May 4, 1999). An issuer conducting an offering in accordance with Regulation A is not affected by today's amendments, because only Article 2 of Regulation S–X applies to Regulation A offerings.

C. Exchange Act Reporting Requirements

1. Exchange Act Rule 12h–5—Exemption From Periodic Reporting for Subsidiary Issuers and Subsidiary Guarantors Where Parent Company Periodic Reports Include Modified Financial Information as Permitted by Paragraphs (b) Through (f) of Rule 3–10

Before today's amendments, subsidiary issuers or subsidiary guarantors that were not required to include separate financial statements in their Securities Act registration statements would request that the Division of Corporation Finance provide no-action relief from the Exchange Act reporting requirements. The Division of Corporation Finance applied the same analysis to these requests as it applied in considering the appropriate presentation of financial information in Securities Act registration statements. As noted above, the volume of these requests has increased significantly.

We are adopting new Rule 12h–5 to reduce significantly the need for these requests by providing certainty regarding the availability of an exemption from Exchange Act reporting. Rule 12h–5 exempts from Exchange Act reporting:

• Subsidiary issuers or subsidiary guarantors permitted to omit financial statements by paragraphs (b) through (f) of Rule 3–10; and

• Recently acquired subsidiary issuers or subsidiary guarantors that would be permitted to omit financial statements by paragraphs (b) through (f) of Rule 3–10, but are required to provide pre-acquisition financial statements under paragraph (g) of that rule.

The parent company periodic reports must include the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10. The parent company periodic reports must contain

this information for as long as the subject securities are outstanding. These exemptions are the same as what the staff currently provides in its responses to requests from subsidiary issuers and subsidiary guarantors.

Rule 12h–5 automatically exempts these subsidiary issuers and subsidiary guarantors from Exchange Act reporting requirements. As a result, there would be no need for them to request no-action letters from the Division of Corporation Finance.

2. Non-Financial Disclosure in Parent Company Periodic Reports

Under Rule 12h–5, the parent company's Exchange Act reports must include the modified financial information permitted by paragraphs (b) through (f) of Rule 3–10. The parent company's periodic reports need not, however, provide the non-financial disclosure required by the periodic report form for the subsidiary, unless the securities laws otherwise require the parent company to provide information about the subsidiary.

3. When Rule 12h–5 Becomes Available or Ceases To Be Available

We requested comment on what should be required of subsidiaries that no longer qualify for the exemption from Exchange Act reporting under proposed Rule 12h–5 because they no longer satisfy the requirements of paragraphs (b) through (f) of Rule 3–10. We received no response to our request, other than a general suggestion to clarify the procedures for these situations. The following procedures will apply in these situations.

- If Rule 12h–5 is not initially available to a subsidiary because it does not satisfy the requirements of paragraphs (b) through (f) of Rule 3–10, but later fulfills the requirements, that subsidiary may write to the Division of Corporation Finance to request no-action relief.
- If a subsidiary initially meets the requirements of paragraphs (b) through (f) of Rule 3–10 and relies on Rule 12h–5, but later ceases to satisfy those requirements, we encourage that subsidiary to file promptly an Item 5 Form 8–K or a Form 6–K to report this change in circumstance. That subsidiary must begin reporting pursuant to the Exchange Act when it fails to satisfy paragraphs (b) through (f) of Rule 3–10. That is, the subsidiary must file the Exchange Act report for the period during which it ceased to satisfy paragraphs (b) through (f) of Rule 3–10. The subsidiary must present the financial statements that are required by Regulation S–X at the time the report is due. The subsidiary may not present the modified information that paragraphs (b) through (f) of Rule 3–10 would have allowed it to present for historical periods.

4. Meaning of the Term ''Financial Statements'' in Rule 12h–5

One commenter suggested that the language in Rule 12h–5 was somewhat ambiguous because it refers to registrants that are permitted to omit ''financial statements.'' [80] That commenter stated that condensed consolidating statements are one form of financial statements. In an attempt to avoid this confusion, throughout the proposing and adopting release, we have referred to the required presentation of financial information as condensed consolidating financial information, not condensed consolidating financial statements. In addition, Rule 12h–5 states that the exemption is applicable to those persons permitted to omit separate financial statements by Rule 3–10. If an issuer is not in compliance with Rule 3–10, it is not permitted to omit financial statements in accordance with Rule 3–10. Therefore, we have not revised Rule 12h–5 in response to this comment.

5. Rule 12h–5 Does Not Require Exchange Act Reporting When Financial Statements Are Provided Solely in Accordance With Rule 3–10(g)

One commenter suggested that we add language to clarify the operation of Rule 12h–5(b). [81] The commenter expressed concern that Rule 12h–5 could be misinterpreted to require Exchange Act reporting when Rule 3–10(g) requires financial statements. We revised the language in Rule 12h–5(b) to clarify that, in the case of recently acquired subsidiary issuers or subsidiary guarantors, Exchange Act reporting is not required when financial statements are provided under Rule 3–10 solely because the subsidiary was recently acquired.

6. Application of Rule 12h–5 When the Guaranteed Security Is in Default

We requested comment on whether reporting relief should be available when a guaranteed security is in default. We asked if additional disclosures should be required in that circumstance. One commenter stated that it did not believe that the default should result in the loss of a subsidiary issuer's or subsidiary guarantor's Rule 12h–5 reporting relief.[82] That commenter also stated that, while additional disclosure may be required in the parent's filing when an issuer defaults on a debt security, it is difficult to predetermine and mandate the necessary disclosure. We agree with that commenter. We also believe that requiring additional disclosure in connection with the exemption provided in Rule 12h–5 is not necessary. Thus, a default on the guaranteed security or the guarantee will not result in the loss of a subsidiary issuer's or subsidiary guarantor's Exchange Act reporting relief under Rule 12h–5.

7. Application of Rule 3–10 and Rule 12h–5 to Foreign Parent Companies With Domestic Subsidiary Issuers or Domestic Subsidiary Guarantors

a. Foreign Parent Companies Reporting on Form 20–F

When a parent company is a foreign private issuer that files on Form 20–F, it is not required to file quarterly reports. Rather, it uses Form 6–K to make public in the United States the information that it made public under foreign law, under exchange regulations, or by distributing it to security holders. Absent the exemption provided by Rule 12h–5, a domestic subsidiary of that foreign parent company would be required to file annual and quarterly reports if it guaranteed registered securities or issued registered, guaranteed securities.

When Rule 12h–5 applies, modified financial information must be included in the parent company's periodic reports.

In the case of a foreign parent company filing on Form 20–F, that disclosure would not appear as frequently as when the domestic subsidiary were reporting. Nevertheless, consistent with the staff's historical position and the concepts underlying Rule 3–10, we believe that the parent company in this situation should not be required to file quarterly information regarding the domestic subsidiary. As we believe that the financial statements of the parent company, along with the required modified financial information permitted by Rule 3–10, are sufficient to inform an investment decision in those situations, the required periodic reports for that parent also should be sufficient. Therefore, if the parent company reports on Form 20–F and is not required to file quarterly reports under the Exchange Act, Rule 3–10 would not require that parent company to file more frequent information regarding its domestic

[80] Comment letter of KPMG LLP (May 4, 1999).

[81] Comment letter of Arthur Andersen (May 4, 1999).

[82] Comment letter of PricewaterhouseCoopers (May 4, 1999).

subsidiary issuers and domestic subsidiary guarantors.

Rule 3–10(a)(3) states that foreign parent companies should look to Item 8.A of Form 20–F to determine the periods for which financial statements are required. On September 30, 2000, Item 8.A of Form 20–F will replace Rule 3–19 of Regulation S–X as the source for the financial statement requirements for foreign private issuers.[83] Before September 30, 2000, foreign private issuers should look to Rule 3–19 instead of Item 8A.

b. Foreign Parent Companies Reporting on Form 40–F

When a Canadian parent company and one or more subsidiaries register an offering of guaranteed securities under the multijurisdictional disclosure system, the parent company and the subsidiaries incur reporting obligations under Section 15(d).[84] When a subsidiary issuer or subsidiary guarantor is also eligible to register its security under the MJDS,[85] the financial statements that would appear in the registration statement and in any annual report on Form 40–F[86] filed by the Canadian parent company would not be affected by Rule 3–10. The disclosure would be in accordance with Canadian disclosure standards. When a subsidiary issuer or subsidiary guarantor is not eligible to register its security under the MJDS,[87] the financial statements of the parent company included in the Securities Act registration statement and an Exchange Act registration statement or annual must comply with Rule 3–10.

D. Financial Statements of Affiliates Whose Securities Collateralize Registered Securities—Rule 3–16 of Regulation S–X

Before today's amendments, the financial statement requirements for affiliates whose securities collateralize registered securities were combined with the requirements for guarantors in Rule 3–10 of Regulation S–X. Because the amendments to Rule 3–10 change significantly the structure of that rule, we are moving the requirements for these affiliates into a rule that applies only to them—Rule 3–16 of Regulation S–X. This change will avoid confusion and make the requirements easier to follow. We are merely relocating the financial statement requirements for affiliates whose securities collateralize registered securities to Rule 3–16; we are not changing those requirements in any way.[88]

One commenter suggested that we clarify whether small business issuers must comply with new Rule 3–16 of Regulation S–X.[89] In response to this comment, we have made clear in Regulation S–B that small business issuers also must comply with Rule 3–16.[90]

One commenter asked us to clarify whether a collateralizing affiliate incurs Exchange Act reporting obligations.[91] Consistent with the past approach, we confirm that collateralizing affiliates will continue not to incur Exchange Act reporting requirements.

Similarly, one commenter asked us to clarify whether financial statements of collateralizing affiliates are required in quarterly reports of the issuer of the collateralized security.[92] Unlike subsidiary issuers and subsidiary guarantors, collateralizing affiliates are not registrants.[93] Therefore, financial statements of collateralizing affiliates are not required in quarterly reports of the issuer of the collateralized security.

IV. Phase-In of Today's Amendments to Rule 3–10

To ease the transition to the amendments to Rule 3–10, we will use the following phase-in schedule.

For Securities Act registration statements:

- Any registration statement that is first filed on or after September 25, 2000 must comply with amended Rule 3–10; and
- Any post-effective amendment filed on or after September 25, 2000 to include either the company's latest audited financial statements in the registration statement or to update the prospectus under Section 10(a)(3) must comply with amended Rule 3–10.

For Exchange Act registration statements:

- Any registration statement that is first filed on or after September 25, 2000 must comply with amended Rule 3–10.

For Exchange Act periodic reports:

- If the reporting company was required to comply with amended Rule 3–10 in a Securities Act or Exchange Act registration statement, all Exchange Act periodic reports for periods ending after that registration statement became effective must comply with amended Rule 3–10;
- For all other reporting companies, the annual report on Form 10–K, Form 10–KSB, or Form 20–F, as applicable, for the first fiscal year ending after [effective date] must comply with amended Rule 3–10 and all Exchange Act periodic reports for subsequent periods must comply with amended Rule 3–10.

In the first registration statement or periodic report to which amended Rule 3–10 applies, the financial statements must reflect the application of amended Rule 3–10 for all periods presented.

V. Cost-Benefit Analysis

We are adopting financial reporting rules for related issuers and guarantors of guaranteed securities. We are also adopting an exemption from periodic reporting for subsidiary issuers and subsidiary guarantors. For the most part, today's amendments codify the positions the staff has developed through Staff Accounting Bulletin No. 53, later interpretations, and the registration statement review process. The amendments deviate from current practice in a significant way only in the following two situations:

- An operating subsidiary issues securities, its parent guarantees the securities, and no subsidiary guarantees the securities; and
- A parent issues securities, an operating subsidiary guarantees the securities, and no other subsidiary guarantees the securities.

Under SAB 53, the staff continued to permit those subsidiaries to present summarized financial information instead of full financial statements. Under the amendments, those

[83] 17 CFR 210.3–19.

[84] The multijurisdictional disclosure system, or MJDS, is a cross-border securities registration and reporting arrangement that we have established with securities regulators in Canada. It is comprised of Forms F–7, F–8, F–9, F–10 and F–80 under the Securities Act and Form 40–F under the Exchange Act. Companies registering securities under Forms F–7, F–8 and F–80 may avoid the reporting obligations under Section 15(d). *See,* Exchange Act Rule 12h–4.

[85] General Instruction I.E of Form F–9 and General Instruction I.H of Form F–10 permit majority-owned subsidiaries to register securities on those forms if various conditions are met.

[86] 17 CFR 249.240f.

[87] This situation arises when the subsidiary issuer or subsidiary guarantor is not incorporated in Canada. In this situation, registrants have filed the registration statement on a combined Form F–9/S–3 or Form F–10/S–1, depending on what registration form the subsidiary is eligible to use.

[88] We have amended Instruction 1 to Item 8 of Form 20–F to include a reference to new Rule 3–16. This amendment merely recognizes that we have moved the requirements for affiliates whose securities collateralize registered securities; it does not change the financial statement requirements in Form 20–F.

[89] Comment letter of Arthur Andersen (May 4, 1999).

[90] *See*, Note 4 to Item 310 of Regulation S–B.

[91] Comment letter of Arthur Andersen (May 4, 1999).

[92] Comment letter of Arthur Andersen (May 4, 1999).

[93] Rule 10–01(a)(1) of Regulation S–X [17 CFR 210.10–01(a)(1)] states ''Interim financial statements required by this rule need only be provided as to the registrant and its subsidiaries consolidated and may be unaudited. Separate statements of other entities which may otherwise be required by this regulation may be omitted.''

subsidiaries will be required to present condensed consolidating financial information instead of summarized financial information.

We believe that condensed consolidating financial information is more appropriate than summarized financial information, as it more clearly distinguishes the assets, liabilities, revenues, expenses, and cash flows of the entities that are legally obligated under the indenture from those that are not.[94] Furthermore, condensed consolidating financial information provides the same level of detail about the financial position, results of operations, and cash flows of subsidiary issuers and subsidiary guarantors that investors are accustomed to obtaining in interim financial statements of a registrant. It also facilitates analysis of trends affecting subsidiary issuers and subsidiary guarantors and relationships among the various components of a consolidated organization.

For purposes of this cost-benefit analysis, there is one quantifiable cost and one quantifiable benefit for registrants. The quantifiable cost is that of preparing condensed consolidating financial information in those situations in which they could have prepared only summarized financial information previously. The quantifiable benefit is the savings to be recognized by not having to prepare a request for relief from the reporting requirements of the Exchange Act. We estimate the total cost to be $87,000 annually. We estimate the total benefit to be $850,000 annually.[95]

In the proposing release, we estimated the aggregate additional annual cost to each registrant that would have to switch from summarized financial information to condensed consolidating financial information to be approximately $1,000. In that release, we also stated that there were 29 registrants that had received a no-action letter in calendar year 1998 from the Division of Corporation Finance permitting them to include summarized financial information in lieu of separate financial statements. In calendar year 1999, there were 26 such registrants. Based on the 1998 numbers, we estimated the total annual cost of the amendments to be $29,000.

We requested comment on our estimates. Two commenters felt that our estimates were too low.[96] We discuss these comments below.

One commenter suggested that it would cost an average of $25,000 to prepare condensed consolidating financial information.[97] That commenter, however, did not provide us with an estimate of how much more it would cost to provide condensed consolidating financial information rather than summarized financial information. We have, therefore, not revised our estimates in response to this comment.

One commenter felt that, for those registrants that would have to switch from summarized financial information to condensed consolidating financial information, it was unreasonable to look at their increased costs for one year instead of the number of years they would provide condensed consolidating financial information. Based on this comment, we have considered the total cost to each registrant to be $1,000 for each of the three years for which financial information is generally required.[98] This results in a cost to each such registrant of $3,000.

Using the revised cost estimate of $3,000, the 29 registrants that received a no-action letter in calendar year 1998 from the Division of Corporation Finance permitting them to include summarized financial information in lieu of separate financial statements would have an increased cost of $87,000. The cost for the 26 registrants that were in that position based on 1999 no-action letters would be $78,000.

Today's amendments benefit companies by reducing the need to prepare and submit requests for no-action letters from the Division of Corporation Finance. In the proposing release, we estimated the annual savings to registrants to be approximately $850,000.[99] In that release, we also discussed the manner in which we estimated those annual savings. There were no responses to our request for comment on the reasonableness of our savings estimates.

In addition to the quantifiable benefit of today's amendments to registrants, we believe that there also are a significant number of unquantifiable benefits to registrants and investors, including the following:

- Today's amendments eliminate uncertainty about which financial statements and periodic reports subsidiary issuers and subsidiary guarantors must file;
- Today's amendments require financial information that is more helpful to an investor in the two areas where summarized financial statements are permitted today; [100] and
- Because registrants are required to provide condensed consolidating financial information in all situations in which they must provide separate financial information, investors will be able to compare the financial information among all offerings and in the secondary markets.

VI. Effects on Efficiency, Competition, and Capital Formation

As required by Section 23(a) of the Exchange Act,[101] we considered the impact any new Exchange Act rule would have on competition. We requested comment on the proposals, but received no response to our request for comment. We believe that the amendments will not have any anti-competitive effect since the rules, to a large extent, simply codify the reporting requirements to which registrants are already subject.

In addition, Section 2(b) of the Securities Act [102] and Section 3(f) of the Exchange Act [103] require us, in adopting a rule that requires a public interest finding, to consider whether the proposed rule will promote efficiency, competition and capital formation. We sought comment on how these changes would affect competition, capital formation and market efficiency, but received no response to our request for comment. We believe that the amendments will have a positive, but

[94] Summarized financial information may obscure these distinctions, particularly if subsidiary guarantors themselves have consolidated operating subsidiaries that are not guarantors.

[95] See Securities Act Release No. 7649 (March 5, 1999) [64 FR 10579], § VIII.

[96] Comment letters of KPMG LLP (May 4, 1999) and Reynolds Metals Company (May 4, 1999).

[97] Comment letter of KPMG LLP (May 4, 1999).

[98] The financial statement requirements for registrants that are not small business issuers are contained in Regulation S–X [17 CFR 210.1–01 through 12–29]. The financial statement requirements for small business issuers are contained in Item 310 of Regulation S–B [17 CFR 228.310].

[99] There were 130 no-action letters issued by the Division of Corporation Finance regarding SAB 53 in 1999. The financial information requirements under today's amendments would be the same with respect to 104 of the no-action letters. The financial information requirements under today's amendments would result in condensed consolidating financial information instead of summarized financial information with respect to 26 of the no-action letters.

[100] Condensed consolidating financial information requires the columnar presentation of each category of parent and subsidiary as issuer, guarantor, or non-guarantor. This approach more clearly distinguishes the assets, liabilities, revenues, expenses, and cash flows of the entities that are legally obligated under the indenture from those that are not, particularly if subsidiary guarantors themselves have consolidated operating subsidiaries that are not guarantors. Another important element of credit decisions is cash flow information. Condensed consolidating financial information requires this information while summarized financial information does not.

[101] 15 U.S.C. 78w(a).

[102] 15 U.S.C. 78b(b).

[103] 15 U.S.C. 78c(f).

unquantifiable, effect on efficiency, competition, and capital formation. The use of condensed consolidating financial information will help investors assess better the repayment risk of different issuers.

We find that the exemptions under Sections 7 [104] and 28 [105] of the Securities Act and Sections 12(h) and 36 [106] of the Exchange Act are in the public interest and for the protection of investors.

VII. Final Regulatory Flexibility Act Certification

In connection with the rule proposals, the Chairman of the Commission certified that the proposed amendments would not, if adopted, have a significant economic impact on a substantial number of small entities. The certification, including the factual bases for the determination, was published with the proposing release in satisfaction of Section 605(b) of Regulatory Flexibility Act.[107] We requested comments on the certification, but received none.

VIII. Paperwork Reduction Act

We submitted to the Office of Management and Budget the proposals for review in accordance with the Paperwork Reduction Act of 1995.[108] The amendments will affect the inclusion of information in Securities Act registration Forms S–1, F–1, S–4 and F–4 (OMB control numbers 3235–0065, 3235–0258, 3235–0324, and 3235–0325, respectively). We estimated that the proposed rules would increase the average burden per form by approximately five minutes.[109] The amendments will also affect the inclusion of information in Exchange Act Forms 10, 10–SB, 10–K, 10–KSB, 10–Q, 10–QSB and 20–F (OMB control numbers 3235–0064, 3235–0063, 3235–0070 and 3235–0288).[110] We estimated the proposed rules would increase the average burden per form by approximately three minutes for Form 10–K, one minute for Form 10–Q, five minutes for Form 10 and one minute for Form 20–F.[111] We estimated the increased burden hours for each form by dividing the estimated aggregate increased burden for all forms, whether or not the filers would be required to report under Rule 3–10, by the estimated total number of filers. The burden for Regulation S–X (OMB control number 3235–0009) will remain unchanged.

The amendments will not affect the retention period. The filing of financial statements, as described in this release, is mandatory. They are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a correctly valid control number.

No commenter responded to our request for comment with respect to these proposed changes in burden hours for each affected form.

IX. Statutory Bases

The rule amendments outlined above are proposed pursuant to Sections 7, 10,[112] 19(a),[113] and 28 of the Securities Act and Sections 3(b), 12,[114] 13,[115] 15(d),[116] 23,[117] and 36 of the Exchange Act.

[104] 15 U.S.C. 77g.

[105] 15 U.S.C. 77z–3.

[106] 15 U.S.C. 78mm.

[107] 5 U.S.C. 605(b).

[108] 44 U.S.C. § 3501 *et seq.*

[109] To arrive at this number, we divided the estimated number of companies that will have to provide condensed consolidating financial information in lieu of summarized financial information per year (29) by the estimated number of filings on these forms per year (5,653) and multiplied that quotient (.00513) by the estimated number of hours to convert financials (16).

[110] In the last ten years, the Division of Corporation Finance has responded to only one SAB 53 request in which the related offering was registered on a small business issuer form. Given the size of issuers who generally issue guaranteed debt, we do not expect that filers on Forms 10–SB, 10–QSB and 10–KSB are likely to issue such debt. Therefore, we make no changes with respect to these forms.

[111] To arrive at this number for Form 10–K, we divided the estimated number of companies that will have to provide condensed consolidating financial information in lieu of summarized financial information per year (29) by the estimated number of filings on this form per year (10,392) and multiplied that quotient (.00279) by the estimated number of hours to convert financials (16). To arrive at this number for Form 10–Q, we divided the estimated number of companies that will have to provide condensed consolidating financial information in lieu of summarized financial information per year (29) by the estimated number of filings on this form per year (29,551) and multiplied that quotient (.0009814) by the estimated number of hours to convert financials (16). To arrive at this number for Form 10, we divided the estimated number of companies that will have to provide condensed consolidating financial information in lieu of summarized financial information per year (.7) by the estimated number of filings on this form per year (124) and multiplied that quotient (.0056451) by the estimated number of hours to convert financials (16). To arrive at this number for Form 20–F, we divided the estimated number of companies that will have to provide condensed consolidating financial information in lieu of summarized financial information per year (1.7) by the estimated number of filings on this form per year (1,007) and multiplied that quotient (.0015888) by the estimated number of hours to convert financials (16).

[112] 15 U.S.C. 77j.

[113] 15 U.S.C. 77t.

[114] 15 U.S.C. 78*l*.

[115] 15 U.S.C. 78m.

[116] 15 U.S.C. 78o(d).

[117] 15 U.S.C. 78w.

List of Subjects

17 CFR Parts 210 and 211

Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small Businesses.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

For the reasons set out in the preamble, the Securities and Exchange Commission amends title 17, chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–i, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), unless otherwise noted.

2. Section 210.3–10 is revised to read as follows:

§ 210.3–10 Financial statements of guarantors and issuers of guaranteed securities registered or being registered.

(a)(1) *General rule.* Every issuer of a registered security that is guaranteed and every guarantor of a registered security must file the financial statements required for a registrant by Regulation S–X.

(2) *Operation of this rule.* Paragraphs (b), (c), (d), (e) and (f) of this section are exceptions to the general rule of paragraph (a)(1) of this section. Only one of these paragraphs can apply to a single issuer or guarantor. Paragraph (g) of this section is a special rule for recently acquired issuers or guarantors that overrides each of these exceptions for a specific issuer or guarantor. Paragraph (h) of this section defines the following terms used in this section: 100% owned, full and unconditional, annual report, quarterly report, no

independent assets or operations, minor, finance subsidiary and operating subsidiary. Paragraph (i) of this section states the requirements for preparing the condensed consolidating financial information required by paragraphs (c), (d), (e) and (f) of this section.

Note to paragraph (a)(2). Where paragraphs (b), (c), (d), (e) and (f) of this section specify the filing of financial statements of the parent company, the financial statements of an entity that is not an issuer or guarantor of the registered security cannot be substituted for those of the parent company.

(3) *Foreign private issuers.* Where any provision of this section requires compliance with §§ 210.3–01 and 3–02, a foreign private issuer may comply by providing financial statements for the periods specified by Item 8.A of Form 20–F (§ 249.220f of this chapter).

(b) *Finance subsidiary issuer of securities guaranteed by its parent company.* When a finance subsidiary issues securities and its parent company guarantees those securities, the registration statement, parent company annual report, or parent company quarterly report need not include financial statements of the issuer if:

(1) The issuer is 100% owned by the parent company guarantor;

(2) The guarantee is full and unconditional;

(3) No other subsidiary of the parent company guarantees the securities; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3–01 and 210.3–02 and include a footnote stating that the issuer is a 100%-owned finance subsidiary of the parent company and the parent company has fully and unconditionally guaranteed the securities. The footnote also must include the narrative disclosures specified in paragraphs (i)(9) and (i)(10) of this section.

Note to paragraph (b). Paragraph (b) is available if a subsidiary issuer satisfies the requirements of this paragraph but for the fact that, instead of the parent company guaranteeing the security, the subsidiary issuer co-issued the security, jointly and severally, with the parent company. In this situation, the narrative information required by paragraph (b)(4) must be modified accordingly.

(c) *Operating subsidiary issuer of securities guaranteed by its parent company.* When an operating subsidiary issues securities and its parent company guarantees those securities, the registration statement, parent company annual report, or parent company quarterly report need not include financial statements of the issuer if:

(1) The issuer is 100% owned by the parent company guarantor;

(2) The guarantee is full and unconditional;

(3) No other subsidiary of the parent company guarantees the securities; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3–01 and 210.3–02 and include, in a footnote, condensed consolidating financial information for the same periods with a separate column for:

(i) The parent company;

(ii) The subsidiary issuer;

(iii) Any other subsidiaries of the parent company on a combined basis;

(iv) Consolidating adjustments; and

(v) The total consolidated amounts.

Notes to paragraph (c).

1. Instead of the condensed consolidating financial information required by paragraph (c)(4), the parent company's financial statements may include a footnote stating, if true, that the parent company has no independent assets or operations, the guarantee is full and unconditional, and any subsidiaries of the parent company other than the subsidiary issuer are minor. The footnote also must include the narrative disclosures specified in paragraphs (i)(9) and (i)(10) of this section.

2. If the alternative disclosure permitted by Note 1 to this paragraph is not applicable because the parent company has independent assets or operations, the condensed consolidating financial information described in paragraph (c)(4) may omit the column for ''any other subsidiaries of the parent company on a combined basis'' if those other subsidiaries are minor.

3. Paragraph (c) is available if a subsidiary issuer satisfies the requirements of this paragraph but for the fact that, instead of the parent company guaranteeing the security, the subsidiary issuer co-issued the security, jointly and severally, with the parent company. In this situation, the narrative information required by paragraph (i)(8) of this section must be modified accordingly.

(d) *Subsidiary issuer of securities guaranteed by its parent company and one or more other subsidiaries of that parent company.* When a subsidiary issues securities and both its parent company and one or more other subsidiaries of that parent company guarantee those securities, the registration statement, parent company annual report, or parent company quarterly report need not include financial statements of the issuer or any subsidiary guarantor if:

(1) The issuer and all subsidiary guarantors are 100% owned by the parent company guarantor;

(2) The guarantees are full and unconditional;

(3) The guarantees are joint and several; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3–01 and 210.3–02 and include, in a footnote, condensed consolidating financial information for the same periods with a separate column for:

(i) The parent company;

(ii) The subsidiary issuer;

(iii) The guarantor subsidiaries of the parent company on a combined basis;

(iv) Any other subsidiaries of the parent company on a combined basis;

(v) Consolidating adjustments; and

(vi) The total consolidated amounts.

Notes to paragraph (d).

1. Paragraph (d) applies in the same manner whether the issuer is a finance subsidiary or an operating subsidiary.

2. The condensed consolidating financial information described in paragraph (d)(4) may omit the column for ''any other subsidiaries of the parent company on a combined basis'' if those other subsidiaries are minor.

3. Paragraph (d) is available if a subsidiary issuer satisfies the requirements of this paragraph but for the fact that, instead of the parent company guaranteeing the security, the subsidiary issuer co-issued the security, jointly and severally, with the parent company. In this situation, the narrative information required by paragraph (i)(8) of this section must be modified accordingly.

4. If all of the requirements in paragraph (d) are satisfied except that the guarantee of a subsidiary is not joint and several with, as applicable, the parent company's guarantee or the guarantees of the parent company and the other subsidiaries, then each subsidiary guarantor whose guarantee is not joint and several need not include separate financial statements, but the condensed consolidating financial information should include a separate column for each guarantor whose guarantee is not joint and several.

5. Instead of the condensed consolidating financial information required by paragraph (d)(4), the parent company's financial statements may include a footnote stating, if true, that the parent company has no independent assets or operations, the subsidiary issuer is a 100% owned finance subsidiary of the parent company, the parent company has guaranteed the securities, all of the parent company's subsidiaries other than the subsidiary issuer have guaranteed the securities, all of the guarantees are full and unconditional, and all of the guarantees are joint and several. The footnote also must include the narrative disclosures specified in paragraphs (i)(9) and (i)(10) of this section.

(e) *Single subsidiary guarantor of securities issued by the parent company of that subsidiary.* When a parent company issues securities and one of its subsidiaries guarantees those securities, the registration statement, parent company annual report, or parent company quarterly report need not include financial statements of the subsidiary guarantor if:

(1) The subsidiary guarantor is 100% owned by the parent company issuer;

(2) The guarantee is full and unconditional;

(3) No other subsidiary of that parent guarantees the securities; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3–01 and 210.3–02 and include, in a footnote, condensed consolidating financial information for the same periods with a separate column for:

(i) The parent company;

(ii) The subsidiary guarantor;

(iii) Any other subsidiaries of the parent company on a combined basis;

(iv) Consolidating adjustments; and

(v) The total consolidated amounts.

Notes to paragraph (e).

1. Paragraph (e) applies in the same manner whether the guarantor is a finance subsidiary or an operating subsidiary.

2. Instead of the condensed consolidating financial information required by paragraph (e)(4), the parent company's financial statements may include a footnote stating, if true, that the parent company has no independent assets or operations, the guarantee is full and unconditional, and any subsidiaries of the parent company other than the subsidiary guarantor are minor. The footnote also must include the narrative disclosures specified in paragraphs (i)(9) and (i)(10) of this section.

3. If the alternative disclosure permitted by Note 2 to this paragraph is not applicable because the parent company has independent assets or operations, the condensed consolidating financial information described in paragraph (e)(4) may omit the column for ''any other subsidiaries of the parent company on a combined basis'' if those other subsidiaries are minor.

4. If, instead of guaranteeing the subject security, a subsidiary co-issues the security jointly and severally with its parent company, this paragraph (e) does not apply. Instead, the appropriate financial information requirement would depend on whether the subsidiary is a finance subsidiary or an operating subsidiary. If the subsidiary is a finance subsidiary, paragraph (b) applies. If the subsidiary is an operating company, paragraph (c) applies.

(f) *Multiple subsidiary guarantors of securities issued by the parent company of those subsidiaries.* When a parent company issues securities and more than one of its subsidiaries guarantee those securities, the registration statement, parent company annual report, or parent company quarterly report need not include financial statements of the subsidiary guarantors if:

(1) Each of the subsidiary guarantors is 100% owned by the parent company issuer;

(2) The guarantees are full and unconditional;

(3) The guarantees are joint and several; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3–01 and 210.3–02 and include, in a footnote, condensed consolidating financial information for the same periods with a separate column for:

(i) The parent company;

(ii) The subsidiary guarantors on a combined basis;

(iii) Any other subsidiaries of the parent company on a combined basis;

(iv) Consolidating adjustments; and

(v) The total consolidated amounts.

Notes to paragraph (f).

1. Instead of the condensed consolidating financial information required by paragraph (f)(4), the parent company's financial statements may include a footnote stating, if true, that the parent company has no independent assets or operations, the guarantees are full and unconditional and joint and several, and any subsidiaries of the parent company other than the subsidiary guarantors are minor. The footnote also must include the narrative disclosures specified in paragraphs (i)(9) and (i)(10) of this section.

2. If the alternative disclosure permitted by Note 1 to this paragraph is not applicable because the parent company has independent assets or operations, the condensed consolidating financial information described in paragraph (f)(4) may omit the column for ''any other subsidiaries of the parent company on a combined basis'' if those other subsidiaries are minor.

3. If any of the subsidiary guarantees is not joint and several with the guarantees of the other subsidiaries, then each subsidiary guarantor whose guarantee is not joint and several need not include separate financial statements, but the condensed consolidating financial information must include a separate column for each subsidiary guarantor whose guarantee is not joint and several.

(g) *Recently acquired subsidiary issuers or subsidiary guarantors.*

(1) The Securities Act registration statement of the parent company must include the financial statements specified in paragraph (g)(2) of this section for any subsidiary that otherwise meets the conditions in paragraph (c), (d), (e) or (f) of this section for omission of separate financial statements if:

(i) The subsidiary has not been included in the audited consolidated results of the parent company for at least nine months of the most recent fiscal year; and

(ii) The net book value or purchase price, whichever is greater, of the subsidiary is 20% or more of the principal amount of the securities being registered.

(2) Financial statements required.

(i) Audited financial statements for a subsidiary described in paragraph (g)(1) of this section must be filed for the subsidiary's most recent fiscal year preceding the acquisition. In addition, unaudited financial statements must be filed for any interim periods specified in §§ 210.3–01 and 210.3–02.

(ii) The financial statements must conform to the requirements of Regulation S–X (§§ 210.1–01 through 12–29), except that supporting schedules need not be filed. If the subsidiary is a foreign business, financial statements of the subsidiary meeting the requirements of Item 17 of Form 20–F (§ 249.220f) will satisfy this item.

(3) Instructions to paragraph (g).

(i) The significance test of paragraph (g)(1)(ii) of this section should be computed using net book value of the subsidiary as of the most recent fiscal year end preceding the acquisition.

(ii) Information required by this paragraph (g) is not required to be included in an annual report or quarterly report.

(iii) Acquisitions of a group of subsidiary issuers or subsidiary guarantors that are related prior to their acquisition shall be aggregated for purposes of applying the 20% test in paragraph (g)(1)(ii) of this section. Subsidiaries shall be deemed to be related prior to their acquisition if:

(A) They are under common control or management;

(B) The acquisition of one subsidiary is conditioned on the acquisition of each subsidiary; or

(C) The acquisition of each subsidiary is conditioned on a single common event.

(h) *Definitions.* For the purposes of this section:

(1) A subsidiary is ''100% owned'' if all of its outstanding voting shares are owned, either directly or indirectly, by its parent company. A subsidiary not in corporate form is 100% owned if the sum of all interests are owned, either directly or indirectly, by its parent company other than:

(i) Securities that are guaranteed by its parent and, if applicable, other 100%-owned subsidiaries of its parent; and

(ii) Securities that guarantee securities issued by its parent and, if applicable, other 100%-owned subsidiaries of its parent.

(2) A guarantee is ''full and unconditional,'' if, when an issuer of a guaranteed security has failed to make a scheduled payment, the guarantor is obligated to make the scheduled payment immediately and, if it doesn't, any holder of the guaranteed security may immediately bring suit directly against the guarantor for payment of all amounts due and payable.

(3) *Annual report* refers to an annual report on Form 10–K, Form 10–KSB, or

Form 20–F (§§ 249.310, 249.310b, or 249.220f of this chapter).

(4) *Quarterly report* refers to a quarterly report on Form 10–Q or Form 10–QSB (§§ 249.308a or 249.308b of this chapter).

(5) A parent company has no independent assets or operations if each of its total assets, revenues, income from continuing operations before income taxes, and cash flows from operating activities (excluding amounts related to its investment in its consolidated subsidiaries) is less than 3% of the corresponding consolidated amount.

(6) A subsidiary is minor if each of its total assets, stockholders' equity, revenues, income from continuing operations before income taxes, and cash flows from operating activities is less than 3% of the parent company's corresponding consolidated amount.

Note to paragraph (h)(6). When considering a group of subsidiaries, the definition applies to each subsidiary in that group individually and to all subsidiaries in that group in the aggregate.

(7) A subsidiary is a finance subsidiary if it has no assets, operations, revenues or cash flows other than those related to the issuance, administration and repayment of the security being registered and any other securities guaranteed by its parent company.

(8) A subsidiary is an operating subsidiary if it is not a finance subsidiary.

(i) Instructions for preparation of the condensed consolidating financial information required by paragraphs (c), (d), (e) and (f) of this section.

(1) Follow the general guidance in § 210.10–01 for the form and content for condensed financial statements and present the financial information in sufficient detail to allow investors to determine the assets, results of operations and cash flows of each of the consolidating groups;

(2) The financial information should be audited for the same periods that the parent company financial statements are required to be audited;

(3) The parent company column should present investments in all subsidiaries under the equity method;

(4) The parent company's basis shall be ''pushed down'' to the applicable subsidiary columns to the extent that push down would be required or permitted in separate financial statements of the subsidiary;

(5) All subsidiary issuer or subsidiary guarantor columns should present the following investments in subsidiaries under the equity method:

(i) Non-guarantor subsidiaries;

(ii) Subsidiary issuers or subsidiary guarantors that are not 100% owned or whose guarantee is not full and unconditional;

(iii) Subsidiary guarantors whose guarantee is not joint and several with the guarantees of the other subsidiaries; and

(iv) Subsidiary guarantors with differences in domestic or foreign laws that affect the enforceability of the guarantees;

(6) Provide a separate column for each subsidiary issuer or subsidiary guarantor that is not 100% owned, whose guarantee is not full and unconditional, or whose guarantee is not joint and several with the guarantees of other subsidiaries. Inclusion of a separate column does not relieve that issuer or guarantor from the requirement to file separate financial statements under paragraph (a) of this section. However, paragraphs (b) through (f) of this section will provide this relief if the particular paragraph is satisfied except that the guarantee is not joint and several;

(7) Provide separate columns for each guarantor by legal jurisdiction if differences in domestic or foreign laws affect the enforceability of the guarantees;

(8) Include the following disclosure, if true:

(i) Each subsidiary issuer or subsidiary guarantor is 100% owned by the parent company;

(ii) All guarantees are full and unconditional; and

(iii) Where there is more than one guarantor, all guarantees are joint and several;

(9) Disclose any significant restrictions on the ability of the parent company or any guarantor to obtain funds from its subsidiaries by dividend or loan;

(10) Provide the disclosures prescribed by § 210.4–08(e)(3) with respect to the subsidiary issuers and subsidiary guarantors;

(11) The disclosure:

(i) May not omit any financial and narrative information about each guarantor if the information would be material for investors to evaluate the sufficiency of the guarantee;

(ii) Shall include sufficient information so as to make the financial information presented not misleading; and

(iii) Need not repeat information that would substantially duplicate disclosure elsewhere in the parent company's consolidated financial statements; and

(12) Where the parent company's consolidated financial statements are prepared on a comprehensive basis other than U.S. Generally Accepted Accounting Principles, reconcile the information in each column to U.S. Generally Accepted Accounting Principles to the extent necessary to allow investors to evaluate the sufficiency of the guarantees. The reconciliation may be limited to the information specified by Item 17 of Form 20–F (§ 249.220f of this chapter). The reconciling information need not duplicate information included elsewhere in the reconciliation of the consolidated financial statements.

3. Section 210.3–16 is added to read as follows:

§ 210.3–16 Financial statements of affiliates whose securities collateralize an issue registered or being registered.

(a) For each of the registrant's affiliates whose securities constitute a substantial portion of the collateral for any class of securities registered or being registered, there shall be filed the financial statements that would be required if the affiliate were a registrant and required to file financial statements. However, financial statements need not be filed pursuant to this section for any person whose statements are otherwise separately included in the filing on an individual basis or on a basis consolidated with its subsidiaries.

(b) For the purposes of this section, securities of a person shall be deemed to constitute a substantial portion of collateral if the aggregate principal amount, par value, or book value of the securities as carried by the registrant, or the market value of such securities, whichever is the greatest, equals 20 percent or more of the principal amount of the secured class of securities.

PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

Subpart A—[Amended]

4. Part 211, subpart A, is amended by adding ''Financial Statements and Periodic Reports For Related Issuers and Guarantors, Appendices A, B and C,'' Release No. FR–55 and the release date of August 4, 2000, to the list of interpretive releases.

Subpart B—[Amended]

5. Part 211 is amended by removing and reserving Staff Accounting Bulletin No. 53 to the table found in Subpart B.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

6. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 781, 78m, 78n, 78o, 78u–5, 78w, 7811, 80a–8, 80a–29, 80a–30, 80a–37, and 80b–11, unless otherwise noted.

7. Section 228.310 is amended by redesignating Note 3 as Note 5 and adding new Notes 3 and 4 to read as follows:

§ 228.310 (Item 310) Financial Statements.

Notes:

* * * * *

3. Financial statements for a subsidiary of a small business issuer that issues securities guaranteed by the small business issuer or guarantees securities issued by the small business issuer must be presented as required by Rule 3–10 of Regulation S–X (17 CFR 210.3–10), except that the periods presented are those required by paragraph (a) of this item.

4. Financial statements for a small business issuer's affiliates whose securities constitute

a substantial portion of the collateral for any class of securities registered or being registered must be presented as required by Rule 3–16 of Regulation S–X (17 CFR 210.3–16), except that the periods presented are those required by paragraph (a) of this item.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 781, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 7811(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

8. Section 240.12h–5 is added to read as follows:

§ 240.12h–5 Exemption for subsidiary issuers of guaranteed securities and subsidiary guarantors.

(a) Any issuer of a guaranteed security, or guarantor of a security, that is permitted to omit financial statements by § 210.3–10 of Regulation S–X of this chapter is exempt from the requirements of Section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

(b) Any issuer of a guaranteed security, or guarantor of a security, that would be permitted to omit financial statements by § 210.3–10 of Regulation S–X of this chapter, but is required to file financial statements in accordance with the operation of § 210.3–10(g) of Regulation S–X of this chapter, is exempt from the requirements of Section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for Part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

10. Effective September 30, 2000, amend Form 20–F (referenced in § 249.220f), first sentence of Instruction 1 of ''Instructions to Item 8'', by revising the phrase ''3–10 and 3–14'' to read ''3–10, 3–14 and 3–16''.

By the Commission.

Dated: August 4, 2000.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendices A, B and C to the preamble will not appear in the Code of Federal Regulations.

Table of Contents

Appendix A—What Does ''100% Owned'' Mean Under Rule 3–10?

Example No. 1: Parent company owns 100% of the voting shares of SubA. SubA owns 100% of the voting shares of Sub1.

Is SubA a 100%-owned subsidiary of the parent company? Yes.

Is Sub1 a 100%-owned subsidiary of SubA? Yes.

Is Sub1 an indirect, 100%-owned subsidiary of the parent company? Yes.

Example No. 2: Parent company owns 100% of the voting shares of SubA. SubA owns 99% of the voting shares of Sub1. The remaining 1% of the voting shares of Sub1 is owned by a party that is not a 100%-owned subsidiary of the parent company.

Is SubA a 100%-owned subsidiary of the parent company? Yes.

Is Sub1 a 100%-owned subsidiary of SubA? No.

Is Sub1 an indirect, 100%-owned subsidiary of the parent company? No.

Example No. 3: Parent company owns 99% of the voting shares of SubA. The remaining 1% of the voting shares of SubA are owned by a party that is not a 100%-owned subsidiary of the parent company. SubA owns 100% of the voting shares of Sub1.

Is SubA a 100%-owned subsidiary of the parent company? No.

Is Sub1 a 100%-owned subsidiary of SubA? Yes.

Is Sub1 an indirect, 100%-owned subsidiary of the parent company? No.

Example No. 4: Parent company owns 100% of the voting shares of SubA and 100% of the voting shares of SubB. SubA owns 60% of the voting shares of Sub1 and SubB owns 40% of the voting shares of Sub1.

Is SubA a 100%-owned subsidiary of the parent company? Yes.

Is SubB a 100%-owned subsidiary of the parent company? Yes.

Is Sub1 a 100%-owned subsidiary of SubA? No.

Is Sub1 a 100%-owned subsidiary of SubB? No.

Is Sub1 an indirect, 100%-owned subsidiary of the parent company? Yes.

Example No. 5: Parent company owns 100% of the voting shares of SubA. Parent company also owns 60% of the voting shares of Sub1. SubA owns 40% of the voting shares of Sub1.

Is SubA a 100%-owned subsidiary of the parent company? Yes.

Is Sub1 a 100%-owned subsidiary of SubA? No.

Is Sub1 an indirect, 100%-owned subsidiary of the parent company? Yes.

Example No. 6: Parent company owns 99% of the voting shares of SubA. As required by the law in its home country, a director of SubA owns the remaining 1% of the voting shares of SubA. SubA owns 100% of the voting shares of Sub1.

Is SubA a 100%-owned subsidiary of the parent company? No.

Is Sub1 a 100%-owned subsidiary of SubA? Yes.

Is Sub1 an indirect, 100%-owned subsidiary of the parent company? No.

Note: This situation is discussed in the release. Under these facts, you may wish to request a no-action letter from the Division of Corporation Finance.

Example No. 7: Parent company owns 100% of the voting shares of SubA. SubA has outstanding securities convertible into its voting shares. These convertible securities are held by a party that is not a 100%-owned subsidiary of the parent.

Is SubA a 100%-owned subsidiary of the parent company? No.

Example No. 8: Parent company owns 100% of the voting shares of SubA. SubA has outstanding securities convertible into the parent company's voting shares. These convertible securities are held by a party that is not a 100%-owned subsidiary of the parent.

Is SubA a 100%-owned subsidiary of the parent company? Yes.

Example No. 9: Parent company owns 100% of the voting shares of SubA. SubA has outstanding options exercisable into its voting shares. These options are held by a party that is not a 100%-owned subsidiary of the parent.

Is SubA a 100%-owned subsidiary of the parent company? No.

Example No. 10: Parent company owns 100% of the voting shares of SubA. SubA has outstanding options exercisable into the parent company's voting shares. These options are held by a party that is not a 100%-owned subsidiary of the parent.

Is SubA a 100%-owned subsidiary of the parent company? Yes.

Example No. 11: Parent company owns 100% of the common stock of SubA. SubA has a class of preferred stock outstanding.

That preferred stock is 100% owned by a party that is not a 100%-owned subsidiary of the parent company. The common equity has full voting rights. The preferred stock is non-voting.

Is SubA a 100%-owned subsidiary of the parent company? Yes.

Appendix B—Recently Acquired Subsidiary Issuers or Subsidiary Guarantors

The following examples illustrate the application of Rule 3–10(g) in determining the financial statements to be provided for recently acquired subsidiary issuers or subsidiary guarantors. For ease of use, we have included only subsidiary guarantor examples in this appendix. You should note, however, that Rule 3–10(g) applies equally to subsidiary issuers and subsidiary guarantors.

Each example is independent of the others. In each of the following examples, assume, unless stated otherwise, that:

- Parent company registers an offering of its debt securities under the Securities Act. The securities are guaranteed by one or more of its subsidiaries.
- Parent company and all acquired subsidiary guarantors have December 31

fiscal year ends and, unless otherwise specified, the parent company has filed its audited consolidated financial statements for the fiscal year in which the subsidiary was acquired.

- All subsidiaries are 100% owned.
- All guarantees are full and unconditional.
- All guarantees are joint and several.
- Each subsidiary's purchase price exceeds its net book value at its fiscal year end preceding the date of acquisition. The purchase price is used for testing significance.

This Appendix addresses only the requirements of Rule 3–10(g) of Regulation S–X. In each example, audited financial statements for additional periods may be required by Rule 3–05 of Regulation S–X.

Example No. 1: Significant acquired guarantor included more than nine months .

Subsidiary A was acquired on March 1, and has been included in its parent company's audited consolidated financial statements for ten months of the most recent fiscal year. Subsidiary A's purchase price exceeds 20% of the principal amount of the debt being registered.

Required financial information: No pre-acquisition financial statements of Subsidiary A are required. Although Subsidiary A's purchase price exceeds 20% of the principal amount of the debt being registered, financial statements may be omitted because Subsidiary A has been included in its parent company's audited consolidated financial statements for more than nine months of the most recent fiscal year.

Example No. 2: Significant acquired guarantor included less than nine months.

Subsidiary B was acquired on September 1, and has been included in its parent company's audited consolidated financial statements for four months of the most recent fiscal year. Subsidiary B's purchase price exceeds 20% of the principal amount of the debt being registered.

Required financial information: Pre-acquisition financial statements of Subsidiary B are required. Subsidiary B is significant and has been included in its parent company's audited consolidated financial statements for less than nine months of the most recent fiscal year. Audited financial statements of Subsidiary B for its most recent fiscal year preceding the acquisition and subsequent unaudited interim financial statements are required.

Example No. 3: Insignificant acquired guarantor. Subsidiary C was acquired on July 1, and has been included in its parent company's audited consolidated financial statements for six months of the most recent fiscal year. Subsidiary C's purchase price is less than 20% of the principal amount of the debt being registered.

Required financial information: Pre-acquisition financial statements of Subsidiary C are not required because Subsidiary C's purchase price is less than 20% of the principal amount of the debt being registered.

Example No. 4: Acquisition of significant business by pre-existing guarantor.

The assets and operations of Business D were acquired on October 1, and have been included in its parent company's audited consolidated financial statements for three months of the most recent fiscal year. Upon acquisition, the assets and operations of Business D were transferred to pre-existing Subsidiary Guarantor X, which had little or no assets or operations. Business D's purchase price exceeds 20% of the principal amount of the debt being registered.

Required financial information: Pre-acquisition financial statements of Business D are required. Although Subsidiary Guarantor X has been included in the consolidated financial statements for more than nine months of the most recent fiscal year, Business D is considered a predecessor of Subsidiary Guarantor X. Audited financial statements of Business D for its most recent fiscal year preceding the acquisition and subsequent unaudited interim financial statements are required.

Example No. 5: Acquisition of multiple related guarantors.

Subsidiaries E and F were acquired on August 1, and have been included in their parent company's audited consolidated financial statements for five months of the most recent fiscal year. Consummation of each acquisition was conditioned upon the other.

Subsidiary E and F's purchase prices were 12% and 17% of the principal amount of the debt being registered, respectively.

Required financial information: Pre-acquisition financial statements of Subsidiaries E and F are required. Because the acquisitions are related, their individual significance levels must be aggregated. Their aggregate purchase price exceeds 20% of the principal amount of the debt being registered. If Subsidiaries E and F were under common control or management before their acquisition, combined financial statements may be presented. Otherwise, separate financial statements are required. Audited financial statements of Subsidiaries E and F for their most recent fiscal years preceding the acquisition and subsequent unaudited interim financial statements are required.

Example No. 6: Acquisition of multiple unrelated guarantors.

Subsidiary G was acquired on May 1, and Subsidiary H was acquired on June 1. Subsidiaries G and H have been included in their parent company's audited consolidated financial statements for eight and seven months of the most recent fiscal year, respectively. The acquisitions are not related by common ownership, common management, or common conditions to consummation. Subsidiary G and H's purchase prices were 11% and 18% of the principal amount of the debt being registered, respectively.

Required financial information: Pre-acquisition financial statements of Subsidiaries G and H are not required. Because the acquisitions are unrelated, their significance levels are assessed individually. Each subsidiary is less than 20% of the principal amount of the debt being registered.

Example No. 7: Very Recent Acquisition of Significant Guarantor.

Subsidiary I was acquired on April 1, after the end of the parent company's most recent fiscal year. Subsidiary I is not yet included in the parent company's audited consolidated financial statements. Subsidiary I's purchase price exceeds 20% of the principal amount of the debt being registered. Parent Company files a Securities Act registration statement on April 2.

Required Financial Information: Pre-acquisition financial statements of Subsidiary I are required. Subsidiary I is significant and has not been included in its parent company's consolidated financial statements for nine months of the most recent fiscal year. Audited financial statements of Subsidiary I for its most recent fiscal year preceding the acquisition are required. The 75 day post-consummation period generally available to a recently acquired business under Rule 3–05 is not applicable to Rule 3–10(g).

Example No. 8: Acquisition of Significant Guarantor Not Yet Consummated.

Parent company contemplates the acquisition of Business J. If acquired, Business J will become a subsidiary guarantor of the debt securities being registered. Consummation has not occurred at the time of effectiveness of the registration statement. Business J's purchase price would exceed 20% of the principal amount of the debt being registered.

Required Financial Information: Pre-acquisition financial statements of Business J are not required under Rule 3–10(g). Business J is not a guarantor at the time of effectiveness of the registration statement. However, as for all businesses to be acquired, the parent company must separately evaluate whether pre-acquisition financial statements of Business J are required by Rule 3–05.

Example No. 9: Significant Guarantor in a Pooling of Interests.

Subsidiary K became a subsidiary on December 1 in a pooling of interests transaction. As a result of application of the pooling of interests method, Subsidiary K is included retroactively in its parent company's audited consolidated financial statements for all three years. Subsidiary K's net book value exceeds 20% of the principal amount of the debt being registered.

Required Financial Information: Pre-acquisition financial statements of Subsidiary K are not required. Inclusion of Subsidiary K in its parent company's condensed consolidating financial information under Rule 3–10 for all periods presented satisfies the requirements of Rule 3–10(g).

Appendix C—Who Is the ''Parent Company'' Under Rule 3–10?

Example No. 1:

- Company A is an Exchange Act reporting company.
- Company A owns 100% of Company B.
- Company B is not an Exchange Act reporting company.
- Company B issues securities.
- Company A guarantees those securities.
- No other company in this corporate structure co-issues or guarantees the securities.

Company A is the ''parent company'' for purposes of applying Rule 3–10 to the subject securities.

Example No. 2:

- Company A is an Exchange Act reporting company.

• Company A issues securities.
• Company A owns 100% of Company B.
• Company B is not an Exchange Act reporting company.
• Company B guarantees the subject securities.
• No other company in this corporate structure co-issues or guarantees the securities.

Company A is the ''parent company'' for purposes of applying Rule 3–10 to the subject securities.

Example No. 3:

• Company A is an Exchange Act reporting company.
• Company A owns 100% of Company B.
• Company B is an Exchange Act reporting company.
• Company B issues securities.
• Company B owns 100% of Company C.
• Company C is not an Exchange Act reporting company.
• Company C guarantees the subject securities.
• Neither Company A nor any other company in this corporate structure co-issues or guarantees the securities.

Company B is the ''parent company'' for purposes of applying Rule 3–10 to the subject securities. The consolidated financial statements of Company A may not be substituted for those of Company B, even if Company A's financial statements are substantially the same as Company B's. The parent company for purposes of Rule 3–10 must be an issuer or guarantor of the subject security.

Example No. 4:

• Company A is not an Exchange Act reporting company.
• Company A owns 100% of Company B.
• Company B is an Exchange Act reporting company.
• Company B issues securities.
• Company B owns 100% of Company C.
• Company C is not an Exchange Act reporting company.
• Company C guarantees the subject securities.
• Neither Company A nor any other company in this corporate structure co-issues or guarantees the securities.

Company B is the ''parent company'' for purposes of applying Rule 3–10 to the subject securities.

Example No. 5:

• Company A is an Exchange Act reporting company.
• Company A owns 100% of Company B.
• Company B is an Exchange Act reporting company.
• Company B owns 100% of Company C.
• Company C is not an Exchange Act reporting company.
• Company C issues securities.
• Company A and Company B guarantee the subject securities.
• No other company in this corporate structure co-issues or guarantees the securities.

Company A is the ''parent company'' for purposes of applying Rule 3–10 to the subject securities. The consolidated financial statements of Company B may not be substituted for those of Company A, even if Company B's financial statements are substantially the same as Company A's. There are no exceptions to the parent company's obligation to provide the financial statements for a registrant under Rule 3–10(a).

Example No. 6:

• Company A is an Exchange Act reporting company.
• Company A owns 100% of Company B and Company C.
• Neither Company B nor Company C is an Exchange Act reporting company.
• Company B owns 50% of Company D.
• Company C owns the other 50% of Company D.
• Company D is not an Exchange Act reporting company.
• Company D owns 100% of Company E.
• Company E is not an Exchange Act reporting company.
• Company E issues securities.
• Companies A, B, C, and D guarantee the subject securities.
• No other company in this corporate structure co-issues or guarantees the securities.

Company A is the ''parent company'' for purposes of applying Rule 3–10 to the subject securities.

Example No. 7:

• Company A is not Exchange Act reporting company.
• Company A owns 100% of Company B and Company C.
• Neither Company B nor Company C is an Exchange Act reporting company.
• Company B owns 50% of Company D.
• Company C owns the other 50% of Company D.
• Company D is an Exchange Act reporting company.
• Company D owns 100% of Company E.
• Company E is not an Exchange Act reporting company.
• Company E issues securities.
• Company D guarantees the subject securities.
• No other company in this corporate structure co-issues or guarantees the securities.

Company D is the ''parent company'' for purposes of applying Rule 3–10 to the subject securities.

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Thursday,
August 24, 2000

Part IV

Securities and Exchange Commission

17 CFR Parts 240, 243, and 249
Selective Disclosure and Insider Trading; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 243, and 249

[Release Nos. 33–7881, 34–43154, IC–24599, File No. S7–31–99]

RIN 3235–AH82

Selective Disclosure and Insider Trading

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting new rules to address three issues: the selective disclosure by issuers of material nonpublic information; when insider trading liability arises in connection with a trader's ''use'' or ''knowing possession'' of material nonpublic information; and when the breach of a family or other non-business relationship may give rise to liability under the misappropriation theory of insider trading. The rules are designed to promote the full and fair disclosure of information by issuers, and to clarify and enhance existing prohibitions against insider trading.

EFFECTIVE DATE: The new rules and amendments will take effect October 23, 2000.

FOR FURTHER INFORMATION CONTACT: Richard A. Levine, Sharon Zamore, or Jacob Lesser, Office of the General Counsel at (202) 942–0890; Amy Starr, Office of Chief Counsel, Division of Corporation Finance at (202) 942–2900.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is adopting new rules: Regulation FD,[1] Rule 10b5–1,[2] and Rule 10b5–2.[3] Additionally, the Commission is adopting amendments to Form 8–K.[4]

I. Executive Summary

We are adopting new rules and amendments to address the selective disclosure of material nonpublic information by issuers and to clarify two issues under the law of insider trading. In response to the comments we received on the proposal, we have made several modifications, as discussed below, in the final rules.

Regulation FD (Fair Disclosure) is a new issuer disclosure rule that addresses selective disclosure. The regulation provides that when an issuer, or person acting on its behalf, discloses material nonpublic information to certain enumerated persons (in general, securities market professionals and holders of the issuer's securities who may well trade on the basis of the information), it must make public disclosure of that information. The timing of the required public disclosure depends on whether the selective disclosure was intentional or non-intentional; for an intentional selective disclosure, the issuer must make public disclosure simultaneously; for a non-intentional disclosure, the issuer must make public disclosure promptly. Under the regulation, the required public disclosure may be made by filing or furnishing a Form 8–K, or by another method or combination of methods that is reasonably designed to effect broad, non-exclusionary distribution of the information to the public.

Rule 10b5–1 addresses the issue of when insider trading liability arises in connection with a trader's ''use'' or ''knowing possession'' of material nonpublic information. This rule provides that a person trades ''on the basis of'' material nonpublic information when the person purchases or sells securities while aware of the information. However, the rule also sets forth several affirmative defenses, which we have modified in response to comments, to permit persons to trade in certain circumstances where it is clear that the information was not a factor in the decision to trade.

Rule 10b5–2 addresses the issue of when a breach of a family or other non-business relationship may give rise to liability under the misappropriation theory of insider trading. The rule sets forth three non-exclusive bases for determining that a duty of trust or confidence was owed by a person receiving information, and will provide greater certainty and clarity on this unsettled issue.

II. Selective Disclosure: Regulation FD

A. Background

As discussed in the Proposing Release,[5] we have become increasingly concerned about the selective disclosure of material information by issuers. As reflected in recent publicized reports, many issuers are disclosing important nonpublic information, such as advance warnings of earnings results, to securities analysts or selected institutional investors or both, before making full disclosure of the same information to the general public. Where this has happened, those who were privy to the information beforehand were able to make a profit or avoid a loss at the expense of those kept in the dark.

We believe that the practice of selective disclosure leads to a loss of investor confidence in the integrity of our capital markets. Investors who see a security's price change dramatically and only later are given access to the information responsible for that move rightly question whether they are on a level playing field with market insiders.

Issuer selective disclosure bears a close resemblance in this regard to ordinary ''tipping'' and insider trading. In both cases, a privileged few gain an informational edge—and the ability to use that edge to profit—from their superior access to corporate insiders, rather than from their skill, acumen, or diligence. Likewise, selective disclosure has an adverse impact on market integrity that is similar to the adverse impact from illegal insider trading: Investors lose confidence in the fairness of the markets when they know that other participants may exploit ''unerodable informational advantages'' derived not from hard work or insights, but from their access to corporate insiders.[6] The economic effects of the two practices are essentially the same. Yet, as a result of judicial interpretations, tipping and insider trading can be severely punished under the antifraud provisions of the federal securities laws, whereas the status of issuer selective disclosure has been considerably less clear.[7]

Regulation FD is also designed to address another threat to the integrity of our markets: the potential for corporate management to treat material information as a commodity to be used to gain or maintain favor with particular analysts or investors. As noted in the

[1] 17 CFR 243.100–243.103.

[2] 17 CFR 240.10b5–1.

[3] 17 CFR 240.10b5–2.

[4] 17 CFR 249.308.

[5] The new rules and amendments were proposed in Exchange Act Release No. 42259 (Dec. 20, 1999) [64 FR 72590].

[6] *United States* v. *O'Hagan,* 521 U.S. 642, 658 (1997) (citing Victor Brudney, *Insiders, Outsiders, and Informational Advantages Under the Federal Securities Laws,* 93 Harv. L. Rev. 322, 356 (1979)). *See also* H.R. Rep. No. 100–910 (1988) (''The investing public has a legitimate expectation that the prices of actively traded securities reflect publicly available information about the issuer of such securities. . . . [T]he small investor will be—and has been—reluctant to invest in the market if he feels it is rigged against him.'')

[7] *See* Proposing Release, part II.A. As discussed in the Proposing Release, in light of the ''personal benefit'' test set forth in the Supreme Court's decision in *Dirks* v. *SEC,* 463 U.S. 646 (1983), many have viewed issuer selective disclosures to analysts as protected from insider trading liability, *see, e.g.,* Paul P. Brountas Jr., *Note: Rule 10b–5 and Voluntary Corporate Disclosures to Securities Analysts,* 92 Colum. L. Rev. 1517, 1529 (1992). We have brought a settled enforcement action alleging a tipping violation by a corporate officer who was alleged to have acted with the motive to protect and enhance his reputation. *SEC* v. *Phillip J. Stevens,* Litigation Release No. 12813 (Mar. 19, 1991).

Proposing Release, in the absence of a prohibition on selective disclosure, analysts may feel pressured to report favorably about a company or otherwise slant their analysis in order to have continued access to selectively disclosed information. We are concerned, in this regard, with reports that analysts who publish negative views of an issuer are sometimes excluded by that issuer from calls and meetings to which other analysts are invited.[8]

Finally, as we also observed in the Proposing Release, technological developments have made it much easier for issuers to disseminate information broadly. Whereas issuers once may have had to rely on analysts to serve as information intermediaries, issuers now can use a variety of methods to communicate directly with the market. In addition to press releases, these methods include, among others, Internet webcasting and teleconferencing. Accordingly, technological limitations no longer provide an excuse for abiding the threats to market integrity that selective disclosure represents.

To address the problem of selective disclosure, we proposed Regulation FD. It targets the practice by establishing new requirements for full and fair disclosure by public companies.

1. Breadth of Comment on the Proposal

The Proposing Release prompted an outpouring of public comment—nearly 6,000 comment letters.[9] The vast majority of these commenters consisted of individual investors, who urged—almost uniformly—that we adopt Regulation FD. Individual investors expressed frustration with the practice of selective disclosure, believing that it places them at a severe disadvantage in the market. Several cited personal experiences in which they believed they had been disadvantaged by the practice.[10] Many felt that selective disclosure was indistinguishable from insider trading in its effect on the market and investors, and expressed surprise that existing law did not already prohibit this practice.

Other comments suggested that today's self-directed, online investors do not expect to rely exclusively on research and analysis performed by professionals, as was more common in the past. With advances in information technology, most notably the Internet, information can be communicated to shareholders directly and in real time, without the intervention of an intermediary. This online revolution has created a greater demand, expectation, and need for direct delivery of market information. As many individual commenters noted, under this paradigm, analysts still provide value for investors by using their education, judgment, and expertise to *analyze* information. On the other hand, investors are rightly concerned with the use of information gatekeepers who merely repeat information that has been selectively disclosed to them.

Noting that analysts predominantly issue ''buy'' recommendations on covered issuers, investors also made the point that current selective disclosure practices may create conflicts of interest; analysts have an incentive not to make negative statements about an issuer if they fear losing their access to selectively disclosed information. Thus, these commenters suggested that a rule against selective disclosure could lead to more objective and accurate analysis and recommendations from securities analysts.

We also received numerous comments from securities industry participants, issuers, lawyers, media representatives, and professional and trade associations. Almost all of these commenters agreed that selective disclosure of material nonpublic information was inappropriate and supported our goals of promoting broader and fairer disclosure by issuers. Some of these commenters believed the proposal was a generally appropriate way to address the problem of selective disclosure. Many others, however, expressed concerns about the approach of Regulation FD and suggested alternate methods for achieving our goals or recommended various changes to the proposal.

2. Need for Regulation

One fundamental issue raised by these commenters was whether Regulation FD is necessary. Some commenters stated that there is limited anecdotal evidence of selective disclosure. Others suggested that it appears that issuer disclosure practices are generally improving, so that we should refrain from rulemaking at this time, and instead permit practices to evolve and encourage voluntary adherence to ''best practices'' of disclosure. We do not agree with these views.

It is, of course, difficult to quantify precisely the amount of selective disclosure—just as it is difficult to quantify precisely the amount of ordinary insider trading. Incidents of selective disclosure, like insider trading, by definition are not conducted openly and in public view. Nevertheless, we have noted numerous media reports in the past two years alleging selective, exclusionary disclosure practices.[11] More generally, surveys of practices of issuer personnel indicate significant acknowledgement of the use of selective disclosure of material information.[12] Based on these public reports, as well as our staff's experience, it is clear to us that the problem of selective disclosure is not limited, as some commenters have suggested, to just a few isolated incidents.

Some commenters cited a February 2000 NIRI survey suggesting an improvement in issuer disclosure

[8] *See, e.g.,* Jeffrey M. Laderman, *Who Can You Trust? Wall Street's Spin Game, Stock Analysts Often Have a Hidden Agenda,* Bus. Wk., Oct. 5, 1998 and Amitabh Dugar, Siva Nathan, *Analysts' Research Reports: Caveat Emptor,* 5 J. Investing 13 (1996).

[9] The public comments we received, and a summary of public comments prepared by our staff, can be reviewed in our Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549, in File No. S7–31–99. Public comments submitted by electronic mail are on our website, *www.sec.gov.*

[10] *See, e.g.,* Letters of Gary Aguirre, David Cambridge, Malcolm Kirby, and Doug Wilmsmeyer.

[11] *See, e.g., EDS Call By Merrill Spurs Warning: Call of the Day,* Bloomberg News, June 9, 2000, *available in* Bloomberg, Hush List; *Altera Steers Analysts' Revenue Forecasts: Call of the Day,* Bloomberg News, June 6, 2000, *available in* Bloomberg, Hush List; *Goldman Falls After Warning on 2nd-Quarter Profit,* Bloomberg News, May 26, 2000, *available in* Bloomberg, Hush List; *Pepsi Bottling Gives Select Group Early Look at Data,* Bloomberg News, May 15, 2000, *available in* Bloomberg, Hush List; *Investors Back SEC Rule to Ban Selective Disclosure,* Bloomberg News, Apr. 27, 2000, *available in* Bloomberg Equity CN; Richard McCaffery, *Papa John's Investors: The Last to Know,* Motley Fool, Dec. 9, 1999 (*http://www.fool.com/news/1999/pzza991209.html*); *Juniper Networks Doesn't Invite All Investors to Product Call,* Bloomberg News, Dec. 7, 1999, *available in* Bloomberg, Hush List; *Access Denied: Some Investors Lose When Kept Out,* Bloomberg News, Dec. 6, 1999, *available in* Bloomberg, Hush List; Fred Barbash, *Companies, Analysts a Little Too Cozy,* Wash. Post, Oct. 31, 1999, at H1; *SEC's Levitt Seeks to Open Company Conference Calls,* Bloomberg News, Oct. 18, 1999, *available in* Bloomberg, Hush List; Susan Pulliam, *Abercrombie & Fitch Ignites Controversy Over Possible Leak of Sluggish Sales Data,* Wall St. J., Oct. 14, 1999, at C1; *SEC May Propose Rule to Curb Selective Disclosure,* Bloomberg News, Oct. 7, 1999, *available in* Bloomberg, Hush List; *Idaho Conference of Moguls, Investors Boosts Stocks,* Bloomberg News, July 8, 1999, *available in* Bloomberg, Hush List; *ConAgra Excludes Investors From 3rd-Qtr Earnings Call,* Bloomberg News, Mar. 25, 1999, *available in* Bloomberg, Hush List; Susan Pulliam and Gary McWilliams, *Compaq is Criticized for How it Disclosed PC Troubles,* Wall St. J., Mar. 2, 1999, at C1; Miriam Hill, *Should Companies Play Favorites?,* Philadelphia Inquirer, Feb. 2, 1999, at C1; *Big Investors Get First Word With Market-Moving News,* Bloomberg News, Dec. 14, 1998, *available in* Bloomberg, Hush List. We do not mean to suggest that all of these reports necessarily involve selective disclosure of material nonpublic information.

[12] National Investor Relations Institute, *A Study of Corporate Disclosure Practices, Second Measurement,* 18 (May 1998); Stephen Barr, ''Back to the Future: What the SEC Should Really Do About Earnings Management,'' CFO Magazine (Sept. 1999).

practices, in that most issuers responding to the survey now are opening certain of their conference calls to individual investors.[13] To the extent this demonstrates voluntary improvement in response to our efforts to focus attention on the problem,[14] we believe this is a positive development. However, these voluntary steps, while laudable, have been far from fully effective. We note, for example, that all of the public reports of selective disclosure cited above occurred after the Commission had begun to focus public attention on issuer selective disclosure. Some occurred even after we proposed Regulation FD. This suggests that the problematic practices targeted by Regulation FD are continuing to occur. Finally, the overwhelming support from investors for Regulation FD demonstrates a strong perception among the investing public that selective disclosure is a significant problem, and shows a corresponding need to prohibit this practice in order to bolster investor confidence in the fairness of the disclosure process.

Some commenters contended that rulemaking on this topic was an inappropriately broad response to the issue.[15] They suggested instead that we use existing tools (namely, the law of insider trading) to bring individual enforcement actions in those cases that appear to involve significant selective disclosures. While we have considered this approach—and of course we remain free to bring such cases where a selective disclosure does violate insider trading laws—we do not agree that this is the appropriate response to the legal uncertainties posed by current insider trading law. In other contexts, we have been criticized for attempting to ''make new law'' in an uncertain area by means of enforcement action and urged instead to seek to change the law through notice-and-comment rulemaking. We believe that this rulemaking is the more careful and considered response to the problem presented by selective disclosure.[16]

3. Effect of Regulation FD on Issuer Communications

One frequently expressed concern was that Regulation FD would not lead to broader dissemination of information, but would in fact have a ''chilling effect'' on the disclosure of information by issuers.[17] In the view of these commenters, issuers would find it so difficult to determine when a disclosure of information would be ''material'' (and therefore subject to the regulation) that, rather than face potential liability and other consequences of violating Regulation FD, they would cease informal communications with the outside world altogether.[18] Some of these commenters therefore recommended that the Commission not adopt any mandatory rule prohibiting selective disclosure, like Regulation FD, but instead pursue voluntary means of addressing the problem, such as interpretive guidance, or the promotion of a ''blue ribbon'' panel to develop best practices for issuer disclosure. Other commenters recommended various ways that Regulation FD could be made narrower or more well-defined, in order to ameliorate some of the concerns about chilling. Other commenters, however, took issue with the supposition that issuer disclosures would be chilled. As some commenters stated, the marketplace simply would not allow issuers to cease communications with analysts and security holders.[19]

We have considered these views carefully. As discussed in the Proposing Release, we are mindful of the concerns about chilling issuer disclosure; we agree that the market is best served by more, not less, disclosure of information by issuers. Because any potential ''chill'' is most likely to arise—if at all—from the fear of legal liability, we included in proposed Regulation FD significant safeguards against inappropriate liability. Most notably, we stated that the regulation would not provide a basis for private liability, and provided that in Commission enforcement actions under Regulation FD we would need to prove knowing or reckless conduct.

4. Revisions to Narrow the Scope of Regulation FD

Nevertheless, to provide even greater protection against the possibility of inappropriate liability, and to guard further against the likelihood of any chilling effect resulting from the regulation, we have modified Regulation FD in several respects.

First, we have narrowed the scope of the regulation so that it does not apply to *all* communications with persons outside the issuer. The regulation will apply only to communications to securities market professionals and to any holder of the issuer's securities under circumstances in which it is reasonably foreseeable that the security holder will trade on the basis of the information.

Second, we have narrowed the types of issuer personnel covered by the regulation to senior officials and those persons who regularly communicate with securities market professionals or with security holders. The effect of these first two changes is that Regulation FD will not apply to a variety of legitimate, ordinary-course business communications or to disclosures to the media.

Third, to remove any doubt that private liability will not result from a Regulation FD violation, we have revised Regulation FD to make absolutely clear that it does not establish a duty for purposes of Rule 10b–5 under the Securities Exchange Act of 1934 (''Exchange Act''). The regulation now includes an express provision in the text stating that a failure to make a disclosure required solely by Regulation FD will not result in a violation of Rule 10b–5.

Fourth, we have made clear that where the regulation speaks of ''knowing or reckless'' conduct, liability will arise only when an issuer's personnel knows or is reckless in not knowing that the information selectively disclosed is both material and nonpublic. This will provide additional assurance that issuers will not be second-guessed on close materiality judgments. Neither will we, nor could we, bring enforcement actions under Regulation FD for mistaken materiality determinations that were not reckless.

Fifth, we have expressly provided that a violation of Regulation FD will not lead to an issuer's loss of eligibility to use short-form registration for a securities offering or affect security holders' ability to resell under Rule 144

[13] NIRI Executive Alert, *Most Corporate Conference Calls Are Now Open to Individual Investors and the Media,* Feb. 29, 2000.

[14] *See, e.g.,* Remarks of Chairman Arthur Levitt to the ''SEC Speaks'' Conference, ''A Question of Integrity: Promoting Investor Confidence by Fighting Insider Trading'' (Feb. 27, 1998); Remarks of Commissioner Isaac C. Hunt, Jr., ''Navigating the Sea of Communications'' (Feb. 26, 1999); Remarks of Commissioner Laura S. Unger, ''Corporate Communications Without Violations: How Much Should Issuers Tell Their Analysts and When'' (Apr. 23, 1999). Copies of these speeches are available on the SEC's website at *www.sec.gov.*

[15] *See, e.g.,* Letters of the Securities Industry Association, The Bond Market Association, and the American Bar Association.

[16] We note, in addition, that if we were successful in enforcement actions charging selective disclosures as a form of fraudulent insider trading, the *in terrorem* effect of that success (and the consequent chilling effect on issuers) would certainly be far greater than the impact of the more measured approach we adopt today.

[17] *See, e.g.,* Letters of the Securities Industry Association, Sullivan and Cromwell, the Association for Investment Management and Research, Merrill Lynch, and the New York City Bar Association.

[18] *See, e.g.,* Letters of the Securities Industry Association, the Association for Investment Management and Research, and Merrill Lynch.

[19] *See, e.g.,* Letters of the United Kingdom Listing Authority, Chris Kallaher, and Joseph L. Toenjes.

under the Securities Act of 1933 (''Securities Act''). This change eliminates additional consequences of a Regulation FD violation that issuers and other commenters considered too onerous.

We have made two other significant changes to the scope of Regulation FD, which, while not specifically addressed to concerns about chilling disclosure, narrow its scope. In response to concerns about the interplay of Regulation FD with the Securities Act disclosure regime, we have expressly excluded from the scope of the regulation communications made in connection with most securities offerings registered under the Securities Act. We believe that the Securities Act already accomplishes most of the policy goals of Regulation FD for purposes of registered offerings, and we will consider this topic in the context of a broader Securities Act rulemaking. Also, we have eliminated foreign governments and foreign private issuers from the coverage of the regulation.

With these changes, we believe Regulation FD strikes an appropriate balance. It establishes a clear rule prohibiting unfair selective disclosure and encourages broad public disclosure. Yet it should not impede ordinary-course business communications or expose issuers to liability for non-intentional selective disclosure unless the issuer fails to make public disclosure after it learns of it. Regulation FD, therefore, should promote full and fair disclosure of information by issuers and enhance the fairness and efficiency of our markets.

B. Discussion of Regulation FD

Rule 100 of Regulation FD sets forth the basic rule regarding selective disclosure. Under this rule, whenever:

(1) an issuer, or person acting on its behalf,

(2) discloses material nonpublic information,

(3) to certain enumerated persons (in general, securities market professionals or holders of the issuer's securities who may well trade on the basis of the information),

(4) the issuer must make public disclosure of that same information:

(a) simultaneously (for intentional disclosures), or

(b) promptly (for non-intentional disclosures).

As a whole, the regulation requires that when an issuer makes an intentional disclosure of material nonpublic information to a person covered by the regulation, it must do so in a manner that provides general public disclosure, rather than through a selective disclosure. For a selective disclosure that is non-intentional, the issuer must publicly disclose the information promptly after it knows (or is reckless in not knowing) that the information selectively disclosed was both material and nonpublic.

We have modified several of the key terms in the regulation that serve to define its precise scope and effect. We discuss the key provisions of the regulation below.

1. Scope of Communications and Issuer Personnel Covered by the Regulation

As proposed, Regulation FD would have applied to any disclosure of material nonpublic information made by an issuer, or person acting on its behalf, to ''any person or persons outside the issuer.'' A number of commenters stated that, as proposed, Regulation FD was too broad in its coverage of disclosures to ''any person or persons outside the issuer,'' and in its definition of ''person acting on behalf of an issuer.'' We are persuaded that these comments have merit, and thus we have modified the scope of the regulation in several respects.

a. *Disclosures to Enumerated Persons.* Commenters stated that if Regulation FD applied to disclosures made to ''any person'' outside the issuer, it would inappropriately interfere with ordinary-course business communications with parties such as customers, suppliers, strategic partners, and government regulators.[20] In addition, several media organizations and rating agencies commented that the regulation should not apply to disclosures made to the press, or to rating agencies for purposes of securities ratings.[21] Overall, commenters suggested various ways to narrow the scope of the regulation, including providing specific exclusions for various types of recipients of information,[22] or expressly limiting the regulation's coverage to persons such as securities analysts, market professionals, institutional investors, or others who regularly make or would reasonably be expected to make investment decisions involving the issuer's securities.[23]

In response to these comments, we have narrowed the coverage of the final regulation. The regulation is designed to address the core problem of selective disclosure made to those who would reasonably be expected to trade securities on the basis of the information or provide others with advice about securities trading. Accordingly, Rule 100(a) of Regulation FD, as adopted, makes clear that the general rule against selective disclosure applies only to disclosures made to the categories of persons enumerated in Rule 100(b)(1).

Rule 100(b)(1) enumerates four categories of persons to whom selective disclosure may not be made absent a specified exclusion. The first three are securities market professionals—(1) broker-dealers and their associated persons, (2) investment advisers, certain institutional investment managers[24] and their associated persons, and (3) investment companies, hedge funds,[25] and affiliated persons.[26] These categories will include sell-side analysts, many buy-side analysts, large institutional investment managers, and other market professionals who may be likely to trade on the basis of selectively disclosed information. The fourth

[20] *See, e.g.*, Letters of the American Bar Association, the American Corporate Counsel Association, the DC Bar, the American Society of Corporate Secretaries, and the Securities Industry Association.

[21] Letters of Dow Jones, Moody's, and Standard and Poors.

[22] *See, e.g.*, Letters of Dow Jones (suggesting exclusion for ''bona fide news organizations''); Standard and Poors (suggesting exclusion for the disclosure to rating agencies when information provided in connection with rating process); and the Securities Industry Association (suggesting exclusion for disclosure to government recipients).

[23] *See, e.g.*, Letters of the American Corporate Counsel Association, the American Society of Corporate Secretaries, the DC Bar, and Sullivan Cromwell.

[24] Rule 100(b)(1)(ii) includes an ''institutional investment manager'' as defined in Section 13(f)(5) of the Exchange Act (15 U.S.C. 78m(f)(5)) that filed a Form 13F for the most recent quarter of the year. Generally, institutional investment managers are required to report on Form 13F if they exercise investment discretion with respect to accounts holding publicly traded equity securities having an aggregate market value of at least $100 million. *See* Exchange Act Rule 13F–1, 17 CFR 240.13f–1.

[25] Rule 100(b)(1)(iii) includes hedge funds by covering persons who would be categorized as investment companies but for the exclusions from the definition of investment company set forth in Sections 3(c)(1) or 3(c)(7) of the Investment Company Act (15 U.S.C. 80a–3(c)(1) or 80a–3(c)(7)).

[26] With one exception, we are using the definitions of these terms provided in the federal securities laws. With respect to investment companies and hedge funds, the definition of ''affiliated person'' that we provide for purposes of Regulation FD is somewhat narrower than the definition of that term provided in Section 2(a)(3) of the Investment Company Act (15 U.S.C. 80a–2(a)(3)). The Regulation FD definition does not include the persons included in Section 2(a)(3)(A) and (B)—*i.e.*, persons who own or control 5% of the voting securities of an investment company, or companies in which the investment company owns or controls 5% of the voting securities. We believe that these persons should not be included among those to whom selective disclosure is prohibited, because they are not ordinarily persons who will exercise influence or control over an investment company's investment decisions, or be used as conduits for transmission of selectively disclosed information.

category of person included in Rule 100(b)(1) is any holder of the issuer's securities, under circumstances in which it is reasonably foreseeable that such person would purchase or sell securities on the basis of the information. Thus, as a whole, Rule 100(b)(1) will cover the types of persons most likely to be the recipients of improper selective disclosure, but should not cover persons who are engaged in ordinary-course business communications with the issuer, or interfere with disclosures to the media or communications to government agencies.[27]

Rule 100(b)(2) sets out four exclusions from coverage. The first, as proposed, is for communications made to a person who owes the issuer a duty of trust or confidence—*i.e.*, a ''temporary insider''—such as an attorney, investment banker, or accountant. The second exclusion is for communications made to any person who expressly agrees to maintain the information in confidence.[28] Any misuse of the information for trading by the persons in these two exclusions would thus be covered under either the ''temporary insider'' or the misappropriation theory of insider trading. This approach recognizes that issuers and their officials may properly share material nonpublic information with outsiders, for legitimate business purposes, when the outsiders are subject to duties of confidentiality.[29]

The third exclusion from coverage in Rule 100(b)(2) is for disclosures to an entity whose primary business is the issuance of credit ratings, provided the information is disclosed solely for the purpose of developing a credit rating and the entity's ratings are publicly available. As discussed by commenters,[30] ratings organizations often obtain nonpublic information in the course of their ratings work. We are not aware, however, of any incidents of selective disclosure involving ratings organizations. Ratings organizations, like the media, have a mission of public disclosure; the objective and result of the ratings process is a widely available publication of the rating when it is completed. And under this provision, for the exclusion to apply, the ratings organization must make its credit ratings publicly available. For these reasons, we believe it is appropriate to provide this exclusion from the coverage of Regulation FD.

The fourth exclusion from coverage is for communications made in connection with most offerings of securities registered under the Securities Act. We discuss this exclusion in greater detail in Part II.B.6 below.

b. *Disclosures by a Person Acting on an Issuer's Behalf.* As proposed, Regulation FD defined any ''person acting on behalf of an issuer'' as ''any officer, director, employee, or agent of an issuer, who discloses material nonpublic information while acting within the scope of his or her authority.'' A number of commenters stated that this definition was too broad and should be limited to ''senior officials,'' to designated or authorized spokespersons, or in some other manner.[31] One commenter said that the definition should be broader to prevent evasion.[32] One commenter stated that if the scope of Regulation FD were limited to disclosures to analysts and institutional investors, then the definition of ''person acting on behalf of an issuer'' would be appropriate.[33]

We have modified slightly the definition of ''person acting on behalf of an issuer'' to make it more precise. We define the term to mean: (1) Any senior official of the issuer[34] or (2) any other officer, employee, or agent of an issuer who regularly communicates with any of the persons described in Rule 100(b)(1)(i), (ii), or (iii), or with the issuer's security holders.[35] By revising the definition in this manner, we provide that the regulation will cover senior management, investor relations professionals, and others who regularly interact with securities market professionals or security holders.[36] Of course, neither an issuer nor such a covered person could avoid the reach of the regulation merely by having a non-covered person make a selective disclosure. Thus, to the extent that another employee had been *directed* to make a selective disclosure by a member of senior management, that member of senior management would be responsible for having made the selective disclosure. *See* Section 20(b) of the Exchange Act. In addition, as was proposed, the definition expressly states that a person who communicates material nonpublic information in breach of a duty to the issuer would not be considered to be acting on behalf of the issuer. Thus, an issuer is not responsible under Regulation FD when one of its employees improperly trades or tips.[37]

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[27] While it is conceivable that a representative of a customer, supplier, strategic partner, news organization, or government agency could be a security holder of the issuer, it ordinarily would not be foreseeable for the issuer engaged in an ordinary-course business-related communication with that person to expect the person to buy or sell the issuer's securities on the basis of the communication. Indeed, if such a person were to trade on the basis of material nonpublic information obtained in his or her representative capacity, the person likely would be liable under the misappropriation theory of insider trading.

[28] This agreement to maintain confidentiality must be express. However, this is not a requirement for a written agreement; an express oral agreement will suffice. In addition, it will not be necessary for the issuer to obtain a confidentiality agreement before making the disclosure. An agreement obtained after the disclosure is made, but before the recipient of the information discloses or trades on the basis of it, will be sufficient. In this manner, an issuer who has mistakenly made a selective disclosure of material information may try to avoid any harm resulting from the selective disclosure by obtaining from the recipient of that disclosure an agreement not to disclose or trade on the basis of the information.

[29] These first two exclusions recognize that an issuer may have a confidentiality agreement with, or be owed a duty of trust or confidence by, an individual or group within a larger organization. In that situation, the issuer can share material nonpublic information with the individual or group that owes it the duty of confidentiality, even though there may be other persons in the organization who do not owe the issuer such a duty (and disclosure to whom would be covered by Regulation FD). For example, if an issuer shares information with an investment banker subject to a duty of trust or confidence or an express confidentiality agreement, the issuer will not be deemed to be sharing the information with other parts of the investment banker's firm (*e.g.*, sell-side analyst or sales force personnel). Conversely, the fact that a duty of trust or confidence or a confidentiality agreement specifically covers disclosure to the investment banker does not permit disclosure to others within the investment banker's firm.

[30] Letters of The Bond Market Association, Moody's, and Standard and Poors.

[31] Letters of the American Bar Association, the American Corporate Counsel Association, and Cleary gottlieb.

[32] Letter of PricewaterhouseCoopers.

[33] Letter of the Business Roundtable.

[34] ''Senior official'' is defined in Rule 101(f) as any director, executive officer, investor relations or public relations officer, or other person with similar functions. *See* Section II.B.3.b below. In the case of a closed-end investment company, Regulation FD also defines the term ''person acting on behalf of an issuer'' to include a senior official of the issuer's investment adviser.

[35] *See* Rule 101(c). For a closed-end investment company subject to Regulation FD, an ''agent'' of the issuer would include a director, officer, or employee of the investment company's investment adviser or other service provider who is acting as an agent of the issuer.

[36] By including those who ''regularly'' communicate with securities market professionals and security holders, the rule focuses on those whose job responsibilities include dealing with securities market professionals and security holders, acting in those capacities. It does not cover every employee who may occasionally communicate with an analyst or security holder. Thus, if an analyst sought to ferret out information about an issuer's business by quizzing a store manager on how business was going, the store manager's response ordinarily would not trigger any Regulation FD obligations. Similarly, an employee who routinely dealt with customers or suppliers would not come within this definition merely because one of these customers or suppliers also happened to be a security holder of the issuer.

[37] As noted in the Proposing Release, in such a case the employee's potential liability will depend on existing insider trading law and relevant doctrines of controlling person liability. *See, e.g.*, Sections 20A and 21A of the Exchange Act, 15 U.S.C. 78t–1 and 78u–1.

2. Disclosures of Material Nonpublic Information

The final regulation, like the proposal, applies to disclosures of ''material nonpublic'' information about the issuer or its securities. The regulation does not define the terms ''material'' and ''nonpublic,'' but relies on existing definitions of these terms established in the case law. Information is material if ''there is a substantial likelihood that a reasonable shareholder would consider it important'' in making an investment decision.[38] To fulfill the materiality requirement, there must be a substantial likelihood that a fact ''would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.'' [39] Information is nonpublic if it has not been disseminated in a manner making it available to investors generally.[40]

The use of the materiality standard in Regulation FD was the subject of many comments. Some commenters supported the use of the existing definition of materiality, noting that attempts to define materiality for purposes of Regulation FD could have implications beyond this regulation.[41] Other commenters, however, including securities industry representatives, securities lawyers, and some issuers or issuer groups, stated that using a general materiality standard in the regulation would cause difficulties for issuer compliance.[42] These commenters claimed that materiality was too unclear and complex a standard for issuer personnel to use in making ''real time'' judgments about disclosures,[43] and that this vagueness would lead to litigation and a chilling effect on corporate disclosure practices.[44] These commenters offered a variety of recommendations to address this issue.

Some commenters suggested that the regulation include a bright-line standard or other limitation on what was material for purposes of Regulation FD, or identify in the regulation an exclusive list of types of information covered.[45] While we acknowledged in the Proposing Release that materiality judgments can be difficult, we do not believe an appropriate answer to this difficulty is to set forth a bright-line test, or an exclusive list of ''material'' items for purposes of Regulation FD. The problem addressed by this regulation is the selective disclosure of corporate information of various types; the general materiality standard has always been understood to encompass the necessary flexibility to fit the circumstances of each case. As the Supreme Court stated in responding to a very similar argument: ''A bright-line rule indeed is easier to follow than a standard that requires the exercise of judgment in the light of all the circumstances. But ease of application alone is not an excuse for ignoring the purposes of the securities acts and Congress' policy decisions. Any approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding such as materiality, must necessarily be over-or underinclusive.''[46]

Other suggestions from commenters included providing more interpretive guidance about types of information or events that are more likely to be considered material. While it is not possible to create an exhaustive list, the following items are some types of information or events that should be reviewed carefully to determine whether they are material: (1) Earnings information; (2) mergers, acquisitions, tender offers, joint ventures, or changes in assets; (3) new products or discoveries, or developments regarding customers or suppliers (*e.g.,* the acquisition or loss of a contract); (4) changes in control or in management; (5) change in auditors or auditor notification that the issuer may no longer rely on an auditor's audit report; (6) events regarding the issuer's securities—*e.g.,* defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, public or private sales of additional securities; and (7) bankruptcies or receiverships.[47]

By including this list, we do not mean to imply that each of these items is *per se* material. The information and events on this list still require determinations as to their materiality (although some determinations will be reached more easily than others). For example, some new products or contracts may clearly be material to an issuer; yet that does not mean that *all* product developments or contracts will be material. This demonstrates, in our view, why no ''bright-line'' standard or list of items can adequately address the range of situations that may arise. Furthermore, we do not and cannot create an exclusive list of events and information that have a higher probability of being considered material.

One common situation that raises special concerns about selective disclosure has been the practice of securities analysts seeking ''guidance'' from issuers regarding earnings forecasts. When an issuer official engages in a private discussion with an analyst who is seeking guidance about earnings estimates, he or she takes on a high degree of risk under Regulation FD. If the issuer official communicates selectively to the analyst nonpublic information that the company's anticipated earnings will be higher than, lower than, or even the same as what analysts have been forecasting, the issuer likely will have violated Regulation FD. This is true whether the information about earnings is communicated expressly or through indirect ''guidance,'' the meaning of which is apparent though implied. Similarly, an issuer cannot render material information immaterial simply by breaking it into ostensibly non-material pieces.

[38] *TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438, 449 (1976); *see Basic* v. *Levinson,* 485 U.S. 224, 231 (1988) (materiality with respect to contingent or speculative events will depend on a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of company activity); *see also* Securities Act Rule 405, 17 CFR 230.405; Exchange Act Rule 12b–2, 17 CFR 240.12b–2; Staff Accounting Bulletin No. 99 (Aug. 12, 1999) (64 FR 45150) (discussing materiality for purposes of financial statements).

[39] *Id.*

[40] *See, e.g., Texas Gulf Sulphur,* 401 F.2d 833, 854 (2d Cir. 1968), *cert, denied,* 394 U.S. 976 (1969); *In re Investors Management Co,* 44 S.E.C. 633, 643 (1971). For purposes of insider trading law, insiders must wait a ''reasonable'' time after disclosure before trading. What constitutes a reasonable time depends on the circumstances of the dissemination. *Faberge, Inc.,* 45 S.E.C. 249, 255 (1973), *citing Texas Gulf Sulphur,* 401 F.2d at 854.

[41] *See, e.g.,* Letters of the Financial Executives Institute and the North American Securities Administrators Association.

[42] *See, e.g.,* Letters of the American Bar Association, the Association for Investment Management and Research, the Association of Publicly Traded Companies, Bank One, Cleary Gottlieb, Goldman Sachs, the Investment Company Institute, the New York City Bar Association, the Securities Industry Association, and Sullivan and Cromwell.

[43] *See* Letter of the American Bar Association.

[44] In the Proposing Release, we offered several suggestions for mitigating these concerns, including: (1) Designating a limited number of persons who are authorized to make a disclosures or field inquiries from investors, analysts, and the media; (2) keeping a record of communications with analysts; (3) declining to answer sensitive questions until issuer personnel could consult with counsel; or (4) seeking time-limited ''embargo'' agreements from analysts in appropriate circumstances. Several commenters believed that the first of these methods was a useful practice, which was already in place at many issuers, but did not believe the other suggestions would be practical. We did not intend to suggest that issuers were required to implement any of these practices, but only offered them as suggestions.

[45] *See e.g.,* Letters of the American Bar Association, the Association of Publicly Traded Companies, the Investment Company Institute, and the DC Bar.

[46] *Basic Inc.* v. *Levinson,* 485 U.S. 224, 236 (1988).

[47] *Compare* NASD Rule IM–4120–1. Some of these items are currently covered in Form 8–K reporting requirements.

At the same time, an issuer is not prohibited from disclosing a non-material piece of information to an analyst, even if, unbeknownst to the issuer, that piece helps the analyst complete a ''mosaic'' of information that, taken together, is material. Similarly, since materiality is an objective test keyed to the reasonable investor, Regulation FD will not be implicated where an issuer discloses immaterial information whose significance is discerned by the analyst. Analysts can provide a valuable service in sifting through and extracting information that would not be significant to the ordinary investor to reach material conclusions. We do not intend, by Regulation FD, to discourage this sort of activity. The focus of Regulation FD is on whether the issuer discloses material nonpublic information, not on whether an analyst, through some combination of persistence, knowledge, and insight, regards as material information whose significance is not apparent to the reasonable investor.

Finally, some commenters stated that greater protection would be afforded to issuers if we made clear that the regulation's requirement for ''intentional'' (knowing or reckless) conduct also extended to the judgment of whether the information disclosed was material.[48] We agree that this clarification is appropriate. As adopted, Rule 101(a) states that a person acts ''intentionally'' only if the person knows, or is reckless in not knowing, that the information he or she is communicating is both material and nonpublic.[49] As commenters suggested, this aspect of the regulation provides additional protection that issuers need not fear being second-guessed by the Commission in enforcement actions for mistaken judgments about materiality in close cases.

3. Intentional and Non-intentional Selective Disclosures: Timing of Required Public Disclosures

A key provision of Regulation FD is that the timing of required public disclosure differs depending on whether the issuer has made an ''intentional'' selective disclosure or a selective disclosure that was not intentional. For an ''intentional'' selective disclosure, the issuer is required to publicly disclose the same information simultaneously.[50]

a. *Standard of ''Intentional'' Selective Disclosure.* Under the regulation, a selective disclosure is ''intentional'' when the issuer or person acting on behalf of the issuer making the disclosure either knows, or is reckless in not knowing, prior to making the disclosure, that the information he or she is communicating is both material and nonpublic.[51] A number of commenters thought that the distinction between intentional and non-intentional disclosures was appropriate.[52] Others, however, stated that the ''intentional'' standard should not include reckless conduct, because of the risk that this standard, in hindsight, could be interpreted as close to a negligence standard.[53] Some commenters suggested that there be a safe harbor for good-faith efforts to comply with Regulation FD or for good-faith determinations that information was not material.[54]

After considering these comments, we have determined to adopt the ''intentional''/non-intentional distinction essentially as proposed. By creating this distinction, Regulation FD already provides greater flexibility as to the timing of required disclosure in the event of erroneous judgments than do other issuer disclosure provisions under the federal securities laws; it essentially incorporates the knowing or reckless mental state required for fraud into this disclosure provision. Since recklessness suffices to meet the mental state requirement even for purposes of the antifraud provisions,[55] we believe it is appropriate to retain recklessness in Regulation FD's definition of ''intentional'' as well. Further, in view of the definition of recklessness that is prevalent in the federal courts,[56] it is unlikely that issuers engaged in good-faith efforts to comply with the regulation will be considered to have acted recklessly.

As requested by several commenters, moreover, we emphasize that the definition of ''intentional'' in Rule 101(a) requires that the individual making the disclosure must know (or be reckless in not knowing) that he or she would be communicating information that was *both* material and nonpublic. Thus, in the case of a selective disclosure attributable to a mistaken determination of materiality, liability will arise only if no reasonable person under the circumstances would have made the same determination.[57] As a result, the circumstances in which a selective disclosure is made may be important. We recognize, for example, that a materiality judgment that might be reckless in the context of a prepared written statement would not necessarily be reckless in the context of an impromptu answer to an unanticipated question.

b. *''Prompt'' Public Disclosure After Non-intentional Selective Disclosures.* Under Rule 100(a)(2), when an issuer makes a covered non-intentional disclosure of material nonpublic information, it is required to make public disclosure promptly. As proposed, Rule 101(d) defined ''promptly'' to mean ''as soon as reasonably practicable'' (but no later than 24 hours) after a senior official of the issuer learns of the disclosure and knows (or is reckless in not knowing) that the information disclosed was both material and non-public. ''Senior official'' was defined in the proposal as any executive officer of the issuer, any director of the issuer, any investor relations officer or public relations officer, or any employee possessing equivalent functions.

Commenters expressed varying views on the definition of ''promptly'' provided in the rule. Some said that the time period provided for disclosure was appropriate; [58] others said it was too short; [59] and still others said that it was too specific, and should require disclosure only as soon as reasonably possible or practicable.[60] We believe that it is preferable for issuers and the investing public that there be a clear delineation of when ''prompt'' disclosure is required. We also believe that the 24-hour requirement strikes the appropriate balance between achieving broad, non-exclusionary disclosure and permitting issuers time to determine

[48] *See, e.g.,* Letter of Charles Schwab.

[49] *See also,* Section II.B.3 below.

[50] Rule 100(a)(1).

[51] Rule 101(a).

[52] *See e.g.,* Letters of the American Corporate Counsel Association, Charles Schwab, and Dow Chemical.

[53] *See, e.g.,* Letters of the American Society of Corporate Secretaries and Credit Suisse First Boston.

[54] *See, e.g.,* Letters of the American Society of Corporate Secretaries, the American Corporate Counsel Association, and J.P. Morgan.

[55] *See, e.g., Rolf* v. *Eastman Dillon & Co.,* 570 F.2d 38 (2d Cir.), *cert. denied,* 439 U.S. 1039 (1978); *McLean* v. *Alexander,* 599 F.2d 1190 (3d Cir. 1979); *Mansbach* v. *Prescott, Ball & Turben,* 598 F.2d 1017 (6th Cir. 1979); *SEC* v. *Carriba Air, Inc.,* 681 F.2d 1318 (11th Cir. 1982).

[56] *See, Hollinger* v. *Titan Capital Corp.,* 914 F.2d 1564 (9th Cir. 1990), *cert. denied,* 499 U.S. 976 (1991); *Sundstrand Corp.* v. *Sun Chemical Corp.,* 553 F.2d 1033 (7th Cir.), *cert. denied,* 434 U.S. 875 (1977).

[57] Of course, a pattern of ''mistaken'' judgments about materiality would make less credible the claim that any particular disclosure was not intentional.

[58] *See* Letters of the Chicago Board Options Exchange and Gretchen Sprigg Wisehart.

[59] *See, e.g.,* Letters of Cleary Gottlieb, Credit Suisse First Boston, Emerson Electric, and Morgan Stanley Dean Witter.

[60] *See, e.g.,* Letters of the American Bar Association, the American Corporate Counsel Association, the National Investor Relations Institute, and PR Newswire.

how to respond after learning of the non-intentional selective disclosure. However, recognizing that sometimes non-intentional selective disclosures will arise close to or over a weekend or holiday, we have slightly modified the final rule to state that the outer boundary for prompt disclosure is the later of 24 hours or the commencement of the next day's trading on the New York Stock Exchange, after a senior official learns of the disclosure and knows (or is reckless in not knowing) that the information disclosed was material and nonpublic. Thus, if a non-intentional selective disclosure of material, nonpublic information is discovered after the close of trading on Friday, for example, the outer boundary for making public disclosure is the beginning of trading on the New York Stock Exchange on Monday.

Commenters also expressed differing views on the definition of ''senior official'' contained in the regulation. We are adopting this definition as proposed.[61] However, in response to comments, we have provided greater clarity as to when the duty to make ''prompt'' disclosure begins. The requirement to make prompt disclosure is triggered when a senior official of the issuer learns that there has been a non-intentional disclosure of information by the issuer or a person acting on behalf of the issuer that the senior official knows, or is reckless in not knowing, is *both* material and non-public.[62] Similar to the language contained in the definition of ''intentional,'' discussed above, this language is designed to make clear that the requirements of the regulation are only triggered when a responsible issuer official (1) learns that certain information has been disclosed, (2) knows (or is reckless in not knowing) that the information disclosed is material, and (3) knows (or is reckless in not knowing) that the information disclosed is nonpublic.

4. ''Public Disclosure'' Required by Regulation FD

Rule 101(e) defines the type of ''public disclosure'' that will satisfy the requirements of Regulation FD. As proposed, Rule 101(e) gave issuers considerable flexibility in determining how to make required public disclosure. The proposal stated that issuers could meet Regulation FD's ''public disclosure'' requirement by filing a Form 8–K, by distributing a press release through a widely disseminated news or wire service, or by any other non-exclusionary method of disclosure that is reasonably designed to provide broad public access—such as announcement at a conference of which the public had notice and to which the public was granted access, either by personal attendance, or telephonic or electronic access. This definition was designed to permit issuers to make use of current technologies, such as webcasting of conference calls, that provide broad public access to issuer disclosure events.

Commenters generally favored the flexible approach provided by Rule 101(e). The American Society of Corporate Secretaries and the Financial Executives Institute, among others, agreed that the definition should not stipulate particular means of technology used for public disclosure. Individual investors supported the idea that issuers should open their conference calls to the public through means such as webcasting over the Internet. Some commenters, however, raised the concern that conference calls or webcasts should not be permitted to supplant the use of press releases as means of disclosing material information.[63] Others suggested that we provide that an issuer's posting of information on its website should also be considered sufficient Regulation FD disclosure.[64]

After considering the range of comments on this issue, we have determined to adopt a slightly modified definition of ''public disclosure'' that would provide even greater flexibility to issuers in determining the most appropriate means of disclosure. As adopted, Rule 101(e) states that issuers can make public disclosure for purposes of Regulation FD by filing or furnishing a Form 8–K, or by disseminating information ''through another method (or combination of methods) of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public.''

a. *Form 8–K Disclosure.* Commenters generally opposed the proposed new Item 10 of Form 8–K based, in large part, on a concern that people would construe a separate Item 10 filing as an admission that the disclosed information is material.[65] In light of the timing requirements for making materiality judgments under Regulation FD, commenters wanted to be able to err on the side of filing information that may or may not be material, without precluding a later conclusion that the information was not material. Commenters recommended amending Item 5 of Form 8–K to include required Regulation FD disclosures.[66] Some commenters also suggested that Regulation FD submissions on Form 8–K should not be treated as ''filed'' for purposes of the Exchange Act.

In light of these comments, we provide that either filing or furnishing information on Form 8–K solely to satisfy Regulation FD will not, by itself, be deemed an admission as to the materiality of the information. In addition, while we retain a separate Item, we also are modifying Item 5 of Form 8–K to address commenters' concerns. As revised, issuers may choose either to ''file'' a report under Item 5 of Form 8–K or to ''furnish'' a report under Item 9 of Form 8–K that will not be deemed ''filed.'' If an issuer chooses to file the information on Form 8–K,[67] the information will be subject to liability under Section 18 of the Exchange Act. The information also will be subject to automatic incorporation by reference into the issuer's Securities Act registration statements, which are subject to liability under Sections 11 and 12(a)(2) of the Securities Act. If an issuer chooses instead to furnish the information,[68] it will not be subject to liability under Section 11 of the Securities Act or Section 18 of the Exchange Act for the disclosure, unless it takes steps to include that disclosure in a filed report, proxy statement, or registration statement. All disclosures on Form 8–K, whether filed or furnished, will remain subject to the antifraud provisions of the federal securities laws.

b. *Alternative Methods of Public Disclosure.* We are recognizing alternative methods of public disclosure to give issuers the flexibility to choose another method (or a combination of methods) of disclosure that will achieve the goal of effecting broad, non-exclusionary distribution of information to the public.[69]

As a general matter, acceptable methods of public disclosure for

[61] Rule 101(f).

[62] Rule 101(d).

[63] *See, e.g.*, Letters of Business Wire, the Society of American Business Editors and Writers, PR Newswire, and the National Federation of Press Women.

[64] *See, e.g.*, Letters of the American Corporate Counsel Association, the American Society of Corporate Secretaries, the Business Roundtable, Intel, and Dow Chemical.

[65] *See, e.g.*, Letters of the American Corporate Counsel Association, the American Society of Corporate Secretaries, Cleary Gottlieb, and the National Investors Relations Institute.

[66] Item 5 is used for optional reporting of any information not required to be reported by a company.

[67] A company must designate in the Form 8–K that it is filing under Item 5 in this case.

[68] A company must designate in the Form 8–K that it is furnishing information under Item 9 in this case.

[69] Rule 101(e)(2).

purposes of Regulation FD will include press releases distributed through a widely circulated news or wire service, or announcements made through press conferences or conference calls that interested members of the public may attend or listen to either in person, by telephonic transmission, or by other electronic transmission (including use of the Internet). The public must be given adequate notice of the conference or call and the means for accessing it. The regulation does not require use of a particular method, or establish a ''one size fits all'' standard for disclosure; rather, it leaves the decision to the issuer to choose methods that are reasonably calculated to make effective, broad, and non-exclusionary public disclosure, given the particular circumstances of that issuer. Indeed, we have modified the language of the regulation to note that the issuer may use a method ''or combination of methods'' of disclosure, in recognition of the fact that it may not always be possible or desirable for an issuer to rely on a single method of disclosure as reasonably designed to effect broad public disclosure.

We believe that issuers could use the following model, which employs a combination of methods of disclosure, for making a planned disclosure of material information, such as a scheduled earnings release:

- First, issue a press release, distributed through regular channels, containing the information; [70]
- Second, provide adequate notice, by a press release and/or website posting, of a scheduled conference call to discuss the announced results, giving investors both the time and date of the conference call, and instructions on how to access the call; and
- Third, hold the conference call in an open manner, permitting investors to listen in either by telephonic means or through Internet webcasting.[71]

By following these steps, an issuer can use the press release to provide the initial broad distribution of the information, and then discuss its release with analysts in the subsequent conference call, without fear that if it should disclose additional material details related to the original disclosure it will be engaging in a selective disclosure of material information. We note that several issuer commenters indicated that many companies already follow this or a similar model for making planned disclosures.[72]

In the Proposing Release, we stated that an issuer's posting of new information on its own website would not by itself be considered a sufficient method of public disclosure. As technology evolves and as more investors have access to and use the Internet, however, we believe that some issuers, whose websites are widely followed by the investment community, could use such a method. Moreover, while the posting of information on an issuer's website may not now, by itself, be a sufficient means of public disclosure, we agree with commenters that issuer websites can be an important component of an effective disclosure process. Thus, in some circumstances an issuer may be able to demonstrate that disclosure made on its website could be part of a combination of methods, ''reasonably designed to provide broad, non-exclusionary distribution'' of information to the public.[73]

We emphasize, however, that while Rule 101(e) gives an issuer considerable flexibility in choosing appropriate methods of public disclosure, it also places a responsibility on the issuer to choose methods that are, in fact, ''reasonably designed'' to effect a broad and non-exclusionary distribution of information to the public. In determining whether an issuer's method of making a particular disclosure was reasonable, we will consider all the relevant facts and circumstances, recognizing that methods of disclosure that may be effective for some issuers may not be effective for others. If, for example, an issuer knows that its press releases are routinely not carried by major business wire services, it may not be sufficient for that issuer to make public disclosure solely by submitting its press release to one of these wire services; the issuer in these circumstances should use other or additional methods of dissemination, such as distribution of the information to local media, furnishing or filing a Form 8–K with the Commission, posting the information on its website, or using a service that distributes the press release to a variety of media outlets and/or retains the press release.

We also caution issuers that a deviation from their usual practices for making public disclosure may affect our judgment as to whether the method they have chosen in a particular case was reasonable. For example, if an issuer typically discloses its quarterly earnings results in regularly disseminated press releases, we might view skeptically an issuer's claim that a last minute webcast of quarterly results, made at the same time as an otherwise selective disclosure of that information, provided effective broad, non-exclusionary public disclosure of the information.[74] In short, an issuer's methods of making disclosure in a particular case should be judged with respect to what is ''reasonably designed'' to effect broad, non-exclusionary distribution in light of all the relevant facts and circumstances.

5. Issuers Subject to Regulation FD

Regulation FD will apply to all issuers with securities registered under Section 12 of the Exchange Act, and all issuers required to file reports under Section 15(d) of the Exchange Act, including closed-end investment companies, but not including other investment companies, foreign governments, or foreign private issuers.

As written, proposed Regulation FD would have applied to foreign sovereign debt issuers required to file reports under the Exchange Act. Today's Regulation FD excludes these issuers from coverage. Proposed Regulation FD also would have applied to foreign private issuers. However, the Commission has determined to exempt foreign private issuers at this time as it has in the past exempted them from certain U.S. reporting requirements such as Forms 10–Q and 8–K. Today's global markets pose new regulatory issues. In recognition of this fact, the Commission will be undertaking a comprehensive review of the reporting requirements of foreign private issuers.[75] In the interim, we remind foreign private issuers of their obligations to make timely disclosure of material information pursuant to applicable SRO rules and

[70] We do not share the concerns of some commenters that Regulation FD will lead to press releases being supplanted as a regular means of corporate disclosure. In many cases, a widely-disseminated press release will provide the best way for an issuer to provide broad, non-exclusionary disclosure of information to the public. Moreover, we note that self-regulatory organization (''SRO'') rules typically require companies to issue press releases to announce material developments. We believe that these rules are appropriate, and do not intend Regulation FD to alter or supplant the SRO requirements.

[71] Giving the public the opportunity to listen to the call does not also require that the issuer give all members of the public the opportunity to ask questions.

[72] *See* Letters of Intel, Charles Schwab, and the Business Roundtable.

[73] We believe that if an issuer is using a webcast or conference call as part of its method of effecting public distribution, it should consider providing a means of making the webcast or call available for some reasonable period of time. This will enable persons who missed the original webcast or call to access the disclosures made therein at a later time.

[74] This is not to say, however, that an issuer may not change its usual practices on an ongoing basis rather than in isolated instances.

[75] The Commisssion has asked the Division of Corporation Finance to undertake this review.

policies,[76] and our expectation that the markets will enforce these obligations. Also, while Regulation FD will not apply, foreign issuers in their disclosure practices remain subject to liability for conduct that violates, and meets the jurisdictional requirements of, the antifraud provisions of the federal securities laws.[77]

6. Securities Act Issues

a. *The Operation of Regulation FD During Securities Offerings.* As proposed, Regulation FD would have applied to disclosures made by a reporting company in connection with an offering under the Securities Act. Commenters expressed a number of concerns about tensions they perceived in the interplay of the disclosure requirements of Regulation FD and those of the Securities Act.[78]

With respect to public offerings, commenters worried that a public disclosure mandated by Regulation FD could violate Section 5 of the Securities Act. Section 5 places limitations on the type of disclosures that may be made at various intervals during a registered offering.[79] Commenters were concerned that public disclosures mandated by Regulation FD would exceed those limitations. Commenters similarly raised concerns about proposed Regulation FD's interrelationship with unregistered offerings of securities. Here, the principal concern was that public disclosure mandated by Regulation FD could conflict with the conditions of the exemption from registration on which the issuer was relying.

i. *Registered Offerings Exemption.* In light of the comments we have received and our own further consideration, we have determined that our concerns about selective disclosure in connection with registered offerings under the Securities Act should not be addressed by overlaying Regulation FD onto the system of regulation provided by that Act. The mandated disclosure regime and the civil liability provisions of the Securities Act reduce substantially any meaningful opportunity for an issuer to make selective disclosure of material information in connection with a registered offering. We are satisfied that the Securities Act already accomplishes at least some of the policy imperative of Regulation FD within the context of a registered offering. Thus, with limited exceptions, Regulation FD as adopted does not apply to disclosures made in connection with a securities offering registered under the Securities Act.[80]

In reaching this conclusion, we also note that our Division of Corporation Finance is currently involved in a systematic review of the Securities Act disclosure system as it relates to communications during the offering process. To the extent selective disclosure concerns arise in connection with registered offerings of securities, we believe it would be more appropriate to consider that impact in the context of a broader Securities Act rulemaking.

In creating the exclusion for registered offerings, we have defined for purposes of Regulation FD when those offerings are considered to begin and end.[81] Communications that take place outside the periods clearly specified would not be considered a part of the registered securities offering to which the exemption from Regulation FD applies. Communications that are not made in connection with a registered offering also are not exempt.[82]

ii. *Unregistered Offerings.* Unregistered offerings are not subject to the full public disclosure and liability protections that the Securities Act applies to registered offerings. An issuer engaged in an unregistered securities offering does not have the same discipline imposed under the Securities Act to merge material information into its public disclosure. While we have carefully considered the concerns expressed by commenters, we believe that Regulation FD should not provide an exception for communications made in connection with an unregistered offering. We believe that reporting companies making unregistered offerings should either publicly disclose the material information they disclose nonpublicly or protect against misuse of that information by having those who receive it agree to maintain it in confidence.

If a reporting issuer releases material information nonpublicly during an unregistered offering with no such understanding about confidentiality, we believe that disclosure under Regulation FD is appropriate. We believe this even if, as a result of such disclosure, the availability of the Securities Act registration exemption may be in question. Public companies undertaking unregistered offerings will need to consider the impact their selective disclosure could have on any exemption they use. Before an exempt offering begins, issuer's counsel should advise the client of the potential complications that selective disclosure of material nonpublic information could raise.

Issuers who undertake private unregistered offerings generally disclose the information to the investors on a confidential basis. Under Regulation FD, public companies will still have the ability to avoid premature public disclosure in those cases. A public company need not make public disclosure if anyone who receives the material, nonpublic information agrees to maintain that information in confidence.

b. *Eligibility for Short-Form Registration and Rule 144.* Commenters observed that a failure to file a Form 8–K under Regulation FD when no alternative qualifying public disclosure is made, would result in the loss of availability of short-form Securities Act registration on Forms S–2 and S–3.[83]

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[76] *See, e.g.*, NASDAQ Rules 4310(c)(16) and 4320(e)(14), and NYSE Listed Company Manual, § 2.

[77] *See Schoenbaum* v. *Firstbrook*, 405 F.2d 200, 208 (2d Cir.) *rev'd on other grounds*, 405 F.2d 215, 220 (2d Cir. 1968) (en banc). *See also* discussion in Section II.B.7. *infra.*

[78] *See, e.g.*, Letters of the American Bar Association, the New York City Bar Association, The Bond Market Association, Cleary Gottlieb, Credit Suisse First Boston, and the Securities Industry Association.

[79] For example, Section 5(c) prohibits offers prior to the filing of a registration statement and Section 5(b)(1) prohibits the use of written or broadcast communications that fall within the ''prospectus'' definition (except the preliminary Section 10 prospectus) until the final Section 10(a) prospectus has been delivered.

[80] *See* Rule 100(b)(2). Registered shelf offerings under Rule 415(a)(1)(i), (ii), (iii), (iv), (v), or (vi) are not excluded from the operation of Regulation FD. Those offerings, which include secondary offerings, dividend or interest reinvestment plans, employee benefit plans, the exercise of outstanding options, warrants or rights, the conversion of outstanding securities, pledges of securities as collateral and issuances of American depositary shares, are generally of an ongoing and continuous nature. Because of the nature of those offerings, issuers would be exempt from the operation of Regulation FD for extended periods of time if the exclusion for registered offerings covered them. Public companies that engage in these offerings should be accustomed to resolving any Section 5 issues relating to their public disclosure of material information during these offerings.

In light of the revisions we have made to Regulation FD to exclude disclosures in connection with a registered offering, we are not adopting proposed Rule 181. That proposed rule was designed to address concerns that Regulation FD-required disclosures during a registered offering could be nonconforming prospectuses that violate Section 5(b)(1) of the Securities Act. Because Regulation FD will not apply to disclosure in connection with registered offerings (other than those of a continuous nature), we bleive that Rule 181 is no longer necessary.

[81] *See* Rule 101(g).

[82] For example, communications that a public company makes about its future financial performance in one of its regularly scheduled conference calls with analysts would not be considered to be made in connection with an offering simply because the issuer was in the midst of a registered offering at that time.

[83] *See, e.g.*, Letters of the American Bar Association; the American Corporate Counsel Association; the American Society of Corporate Secretaries; the New York State Bar Association; the

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They pointed out that because the proposal did not contain any means to alter that ineligibility, the issuer would be disqualified from using Form S–2 or S–3 for at least a year from the date of the non-compliance with Regulation FD. Commenters also noted that a failure to file a required Form 8–K would render Rule 144 temporarily unavailable for resale of restricted and control securities, and Form S–8 temporarily unavailable for employee benefit plan offerings.[84] They pointed out that the loss of Rule 144 would primarily penalize shareholders reselling or attempting to resell securities. They also noted that the loss of Form S–8 could have a detrimental effect on employees.

The reporting status requirements in Forms S–2, S–3 and S–8 and Rule 144, the commenters argued, were not intended to be linked to a system for dissemination of discrete information outside of the traditional periodic reporting obligations of companies. The commenters were concerned that these consequences for the issuer and investors may be unduly harsh and not in line with the purposes of Regulation FD.

We find merit in these concerns and are modifying this aspect of the regulation. The purpose of Regulation FD is to discourage selective disclosure of material nonpublic information by imposing a requirement to make the information available to the markets generally when it has been made available to a select few. We agree that the purpose is not well served by negatively affecting a company's ability to access the capital markets. Nor is it well served by penalizing the shareholders or employees of the company. As discussed below, we have other adequate enforcement remedies that will provide a proportionate response for a violation and will have the desired effect on compliance. To implement our approach, Rule 103 of the regulation as adopted states that an issuer's failure to comply with the regulation will not affect whether the issuer is considered current or, where applicable, timely in its Exchange Act reports for purposes of Form S–8, short-form registration on Form S–2 or S–3 and Rule 144.

7. Liability Issues

We recognize that the prospect of private liability for violations of Regulation FD could contribute to a ''chilling effect'' on issuer communications. Issuers might refrain from some informal communications with outsiders if they feared that engaging in such communications, even when appropriate, would lead to their being charged in private lawsuits with violations of Regulation FD. Accordingly, we emphasized in the Proposing Release that Regulation FD is an issuer disclosure rule that is designed to create duties only under Sections 13(a) and 15(d) of the Exchange Act and Section 30 of the Investment Company Act. It is not an antifraud rule, and it is not designed to create new duties under the antifraud provisions of the federal securities laws or in private rights of action.[85]

Most commenters who addressed this point believed that our decision not to create private liability for Regulation FD violations was appropriate. Several suggested, however, that the language in the Proposing Release offered insufficient protection from private lawsuits. In response to these comments, we have added to Regulation FD a new Rule 102, which expressly provides that no failure to make a public disclosure required solely by Regulation FD shall be deemed to be a violation of Rule 10b–5.[86] This provision makes clear that Regulation FD does not create a new duty for purposes of Rule 10b–5 liability. Accordingly, private plaintiffs cannot rely on an issuer's violation of Regulation FD as a basis for a private action alleging Rule 10b–5 violations.

Rule 102 is designed to exclude Rule 10b–5 liability for cases that would be based ''solely'' on a failure to make a public disclosure required by Regulation FD. As such, it does not affect any existing grounds for liability under Rule 10b–5. Thus, for example, liability for ''tipping'' and insider trading under Rule 10b–5 may still exist if a selective disclosure is made in circumstances that meet the *Dirks* ''personal benefit'' test.[87] In addition, an issuer's failure to make a public disclosure still may give rise to liability under a ''duty to correct'' or ''duty to update'' theory in certain circumstances.[88] And an issuer's contacts with analysts may lead to liability under the ''entanglement'' or ''adoption'' theories.[89] In addition, if an issuer's report or public disclosure made under Regulation FD contained false or misleading information, or omitted material information, Rule 102 would not provide protection from Rule 10b–5 liability.

Finally, if an issuer failed to comply with Regulation FD, it would be subject to an SEC enforcement action alleging violations of Section 13(a) or 15(d) of the Exchange Act (or, in the case of a closed-end investment company, Section 30 of the Investment Company Act) and Regulation FD. We could bring an administrative action seeking a cease-and-desist order, or a civil action seeking an injunction and/or civil money penalties.[90] In appropriate cases, we could also bring an enforcement action against an individual at the issuer responsible for the violation, either as ''a cause of'' the violation in a cease-and-desist proceeding,[91] or as an aider and abetter of the violation in an injunctive action.[92]

Securities Industry Association; and Sullivan & Cromwell.

Form S–3 requires that the issuer be cureent and timely in filing its reports under Sections 13, 14 and 15(d) for a period of at least 12 calendar months prior to filing the registration statement. Form S–2 requires the same except that the issuer must be current in its reporting for the last 36 calendar months.

[84] Rule 144 requires that for such a resale to be valid the issuer of the securities must have made all filings required under the Exchange Act during the preceeding 12 months. Form S–8 requires that the issuer be current in its reporting for the last 12 calendar months (or for such shorter period that the issuer was required to file such reports and materials). Rule 144 and Form S–8 eligibility would have been lost from the time of the failure to comply with Regulation FD until the company disclosed the information under the terms of the regulation.

[85] In addition, because a violation of Regulation FD is not an antifraud violation, it would not lead to loss of the safe harbor for forward looking statements provided by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104–67, 109 Stat. 737. *See* Securities Act Section 27A(b), 15 U.S.C. 77z–2(b); and Exchange Act Section 21E(b), 15 U.S.C. 78u–5(b).

[86] This provision is limited to Regulation FD disclosure requirements and should be distinguished from other reporting requirements under Section 13(a) or 15(d) which do create a duty to disclose for purposes of Rule 10b–5.

[87] *See SEC* v. *Phillip J. Stevens, supra* note 7.

[88] *See generally Backman* v. *Polaroid Corp.,* 910 F.2d 10 (1st Cir. 1990) (en banc); *In re Phillips Petroleum Sec. Litig.,* 881 F.2d 1236 (3d Cir. 1989).

[89] *See, e.g., Elkind* v. *Ligget & Myers, Inc.,* 635 F.2d 156 (2d Cir. 1980); *In the Matter of Presstek, Inc.,* Exchange Act Release No. 39472 (Dec. 22, 1997).

[90] Regulation FD does not expressly require issuers to adopt policies and procedures to avoid violations, but we expect that most issuers will use appropriate disclosure policies as a safeguard against selective disclosure. We are aware that many, if not most, issuers already have policies and procedures regarding disclosure practices, the dissemination of material information, and the question of which issuer personnel are authorized to speak to analysts, the media, or investors. The existence of an appropriate policy, and the issuer's general adherence to it, may often be relevant to determining the issuer's intent with regard to a selective disclosure.

[91] Section 21C of the Exchange Act, 15 U.S.C. 78u–3. A failure to file or otherwise make required public disclosure under Regulation FD will be considered a violation for as long as the failure continues; in our enforcement actions, we likely will seek more severe sanctions for violations that continue for a longer period of time.

[92] Section 20(e) of the Exchange Act, 15 U.S.C. 78t(e).

III. Insider Trading Rules

As discussed in the Proposing Release, the prohibitions against insider trading in our securities laws play an essential role in maintaining the fairness, health, and integrity of our markets. We have long recognized that the fundamental unfairness of insider trading harms not only individual investors but also the very foundations of our markets, by undermining investor confidence in the integrity of the markets. Congress, by enacting two separate laws providing enhanced penalties for insider trading, has expressed its strong support for our insider trading enforcement program.[93] And the Supreme Court in *United States* v. *O'Hagan* has recently endorsed a key component of insider trading law, the ''misappropriation'' theory, as consistent with the ''animating purpose'' of the federal securities laws: ''to insure honest securities markets and thereby promote investor confidence.'' [94]

As discussed more fully in the Proposing Release, insider trading law has developed on a case-by-case basis under the antifraud provisions of the federal securities laws, primarily Section 10(b) of the Exchange Act and Rule 10b–5. As a result, from time to time there have been issues on which various courts disagreed. Rules 10b5–1 and 10b5–2 resolve two such issues.

A. Rule 10b5–1: Trading ''On the Basis Of'' Material Nonpublic Information

1. Background

As discussed in the Proposing Release, one unsettled issue in insider trading law has been what, if any, causal connection must be shown between the trader's possession of inside information and his or her trading. In enforcement cases, we have argued that a trader may be liable for trading while in ''knowing possession'' of the information. The contrary view is that a trader is not liable unless it is shown that he or she ''used'' the information for trading. Until recent years, there has been little case law discussing this issue. Although the Supreme Court has variously described an insider's violations as trading ''on'' [95] or ''on the basis of'' [96] material nonpublic information, it has not addressed the use/possession issue. Three recent courts of appeals cases addressed the issue but reached different results.[97]

As discussed more fully in the Proposing Release, in our view, the goals of insider trading prohibitions—protecting investors and the integrity of securities markets—are best accomplished by a standard closer to the ''knowing possession'' standard than to the ''use'' standard.[98] At the same time, we recognize that an absolute standard based on knowing possession, or awareness, could be overbroad in some respects. The new rule attempts to balance these considerations by means of a general rule based on ''awareness'' of the material nonpublic information, with several carefully enumerated affirmative defenses. This approach will better enable insiders and issuers to conduct themselves in accordance with the law.

While many of the commenters on Rule 10b5–1 supported our goals of providing greater clarity in the area of insider trading law, some suggested alternative approaches to achieving these goals. In that regard, a common comment was that the rule should not rely on exclusive affirmative defenses. Commenters suggested that we should either redesignate the affirmative defenses as non-exclusive safe harbors or add a catch-all defense to allow a defendant to show that he or she did not use the information.[99]

We believe the approach we proposed is appropriate. In our view, adding a catch-all defense or redesignating the affirmative defenses as non-exclusive safe harbors would effectively negate the clarity and certainty that the rule attempts to provide. Because we believe that an awareness standard better serves the goals of insider trading law, the rule as adopted employs an awareness standard with carefully enumerated affirmative defenses. As discussed below, however, we have somewhat modified these defenses in response to comments that they were too narrow or rigid, and that additional ones were necessary.

Some commenters stated that an awareness standard might eliminate the element of scienter from insider trading cases, contrary to the requirements of Section 10(b) of the Exchange Act,[100] and that we therefore lack the authority to promulgate the rule.[101] These comments misconstrue the intent and effect of the rule. As discussed in the Proposing Release and expressly stated in the Preliminary Note, Rule 10b5–1 is designed to address only the use/possession issue in insider trading cases under Rule 10b–5. The rule does not modify or address any other aspect of insider trading law, which has been established by case law. Scienter remains a necessary element for liability under Section 10(b) of the Exchange Act and Rule 10b–5 thereunder, and Rule 10b5–1 does not change this.

2. Provisions of Rule 10b5–1

We are adopting, as proposed, the general rule set forth in Rule 10b5–1(a), and the definition of ''on the basis of'' material nonpublic information in Rule 10b5–1(b). A trade is on the basis of material nonpublic information if the trader was aware of the material, nonpublic information when the person made the purchase or sale.

Some commenters stated that a use standard would be preferable,[102] or suggested that the rule instead state that awareness of the information should give rise to a presumption of use.[103] As noted above, we believe that awareness, rather than use, most effectively serves the fundamental goal of insider trading law—protecting investor confidence in market integrity. The awareness standard reflects the common sense notion that a trader who is aware of inside information when making a trading decision inevitably makes use of the information.[104] Additionally, a clear awareness standard will provide greater clarity and certainty than a presumption or ''strong inference'' approach.[105] Accordingly, we have determined to adopt the awareness standard as proposed.

The proposed affirmative defenses generated a substantial number of

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[93] Insider Trading Sanctions Act of 1984, Pub. L. No. 98–376, 98 Stat. 1264; Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100–704, 102 Stat. 4677.

[94] *United States* v. *O'Hagan,* 521 U.S. 642, 658 (1997).

[95] *See Dirks* v. *SEC,* 463 U.S. 646, 654 (1983).

[96] *See O'Hagan,* 521 U.S. at 651–52.

[97] *Compare United States* v. *Teicher,* 987 F.2d 112, 120–21 (2d Cir.), *cert. denied,* 510 U.S. 976 (1993) (suggesting that ''knowing possession'' is sufficient) with *SEC* v. *Adler,* 137 F.3d 1325, 1337 (11th Cir. 1998) (''use'' required, but proof of possession provides strong inference of use) and *United States* v. *Smith,* 155 F.3d 1051, 1069 & n.27 (9th Cir. 1998), *cert. denied,* 525 U.S. 1071 (1999) (requiring that ''use'' be proven in a criminal case).

[98] *See* Proposing Release at part III.A.1.

[99] *See, e.g.,* Letters of the Securities Industry Association, the American Bar Association, Sullivan and Cromwell, and the DC Bar.

[100] *Ernst & Ernst* v. *Hochfelder,* 425 U.S. 185 (1976); *Chiarella* v. *United States,* 445 U.S. 222 (1980).

[101] *See* Letters of the American Bar Association and Sullivan and Cromwell.

[102] *See, e.g.,* Letters of the American Bar Association, the New York City Bar Association, the Investment Company Institute, the DC Bar, and Sullivan and Cromwell.

[103] Letters of the american Society of Corporate Secretaries and Brobeck Phleger & Harrison.

[104] *See Teicher,* 987 F.2d at 120.

[105] Some commenters stated that ''aware'' was an unclear term that may be interpreted to mean something less than ''knowing possession.'' We disagree. ''Aware'' is a commonly used and well-defined English word, meaning ''having knowledge; conscious; cognizant.'' We believe that ''awareness'' has a much clearer meaning that ''knowing possession,'' which has not been defined by case law.

comments. Some commenters suggested that the affirmative defenses in the Proposing Release were too restrictive,[106] or that additional defenses were needed to protect various common trading mechanisms, such as issuer repurchase programs and employee benefit plans.[107] Some of these commenters noted that the requirement that a trader specify prices, amounts, and dates of purchases or sales pursuant to binding contracts, instructions, or written plans left some common, legitimate trading mechanisms outside the protection of the proposed affirmative defenses. Additionally, some commenters questioned the Proposing Release's exclusion of a price limit from the definition of a specified ''price.'' [108] In consideration of these comments, we are revising the affirmative defense that allows purchases and sales pursuant to contracts, instructions, and plans. The revised language responds to commenters' concerns by providing appropriate flexibility to persons who wish to structure securities trading plans and strategies when they are not aware of material nonpublic information, and do not exercise any influence over the transaction once they do become aware of such information.

As adopted, paragraph (c)(1)(i) sets forth an affirmative defense from the general rule, which applies both to individuals and entities that trade. To satisfy this provision, a person must establish several factors.

- First, the person must demonstrate that before becoming aware of the information, he or she had entered into a binding contract to purchase or sell the security, provided instructions to another person to execute the trade for the instructing person's account, or adopted a written plan for trading securities.[109]
- Second, the person must demonstrate that, with respect to the purchase or sale, the contract, instructions, or plan either: (1) Expressly specified the amount, price, and date; (2) provided a written formula or algorithm, or computer program, for determining amounts, prices, and dates; or (3) did not permit the person to exercise any subsequent influence over how, when, or whether to effect purchases or sales; provided, in addition, that any other person who did exercise such influence was not aware of the material nonpublic information when doing so.[110]
- Third, the person must demonstrate that the purchase or sale that occurred was pursuant to the prior contract, instruction, or plan. A purchase or sale is not pursuant to a contract, instruction, or plan if, among other things, the person who entered into the contract, instruction, or plan altered or deviated from the contract, instruction, or plan or entered into or altered a corresponding or hedging transaction or position with respect to those securities.[111]

Under paragraph (c)(1)(ii), which we adopt as proposed, the exclusion provided in paragraph (c)(1)(i) will be available only if the contract, instruction, or plan was entered into in good faith and not as part of a scheme to evade the prohibitions of this section.

Paragraph (c)(1)(iii) defines several key terms in the exclusion. We are adopting, substantially as proposed, the definition of ''amount'',[112] which means either a specified number of shares or a specified dollar value of securities. We have revised the definition of ''price'' and added a definition of ''date.'' As adopted, ''price'' means market price on a particular date or a limit price or a particular dollar price.[113] ''Date'' means either the specific day of the year on which a market order is to be executed, or a day or days of the year on which a limit order is in force.[114]

Taken as a whole, the revised defense is designed to cover situations in which a person can demonstrate that the material nonpublic information was not a factor in the trading decision. We believe this provision will provide appropriate flexibility to those who would like to plan securities transactions in advance at a time when they are not aware of material nonpublic information, and then carry out those pre-planned transactions at a later time, even if they later become aware of material nonpublic information.[115]

For example, an issuer operating a repurchase program will not need to specify with precision the amounts, prices, and dates on which it will repurchase its securities. Rather, an issuer could adopt a written plan, when it is not aware of material nonpublic information, that uses a written formula to derive amounts, prices, and dates. Or the plan could simply delegate all the discretion to determine amounts, prices, and dates to another person who is not aware of the information—provided that the plan did not permit the issuer to (and in fact the issuer did not) exercise any subsequent influence over the purchases or sales.[116]

Similarly, an employee wishing to adopt a plan for exercising stock options and selling the underlying shares could, while not aware of material nonpublic information, adopt a written plan that contained a formula for determining the specified percentage of the employee's vested options to be exercised and/or sold at or above a specific price. The formula could provide, for example, that the employee will exercise options and sell the shares one month before each date on which her son's college tuition is due, and link the amount of the trade to the cost of the tuition.

An employee also could acquire company stock through payroll deductions under an employee stock purchase plan or a Section 401(k) plan. The employee could provide oral instructions as to his or her plan participation,[117] or proceed by means of a written plan.[118] The transaction price could be computed as a percentage of market price, and the transaction amount could be based on a percentage of salary to be deducted under the plan.[119] The date of a plan transaction

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[106] *See, e.g.,* Letter of the Securities Industry Association.

[107] *See* Letters of LeBoeuf, Lamb, Greene, & MacRae (issuer repurchases); the American Society of Corporate Secretaries, Brobeck Phleger & Harrison (employee stock option plans); and L.B. Foster Company (employee stock purchase plans).

[108] *See, e.g.,* Letter of the American Society of Corporate Secretaries.

[109] Rule 10b5–1(c)(1)(i)(A).

[110] Rule 10b5–(c)(1)(i)(B). We have removed the proposed affirmative defense defense for purchases or sales that result from a written plan for trading securities that is designed to tracck or correspond to a market index, market segment, or group of securities. We bleieve that the activity that was contemplated by that provision is permissible under the defense as adopted. Therefore, a separate defense is no longer necessary.

[111] Rule 10b5–1(c)(1)(i)(C). However, a person acting in good faith may modify a prior contract, instruction, or plan before becoming aware of material nonpublic information. In that case, a purchase or sale that complies with the modified contract, instruciton, or plan will be considered pursuant to a new contract, instruction, or plan.

[112] Rule 10b5–1(c)(1)(iii)(A).

[113] Rule 10b5–1(c)(1)(iii)(B).

[114] Rule 10b5–1(c)(1)(iii)(C).

[115] Some commenters raised questions about the treatment of standardized options trading under the proposed rule. These commenters suggested that the exercise of a standardized option should be allowed, regardless of what information the trader was aware of at the time of exercise, because the relevant investment decision was made when the person purchased the standardized option. We do not agree that the decision to exercise a standardized option is not a separate investment decision. However, Rule 10b5–1, as adopted, does not affect the analysis of whether it is a separate investment decision. The rule could, however, affect options transactions in that it permits a person to pre-arrange, at a time when he or she is not aware of material nonpublic information, a plan for exercising options in the future.

[116] A person would not satisfy this provision of the rule by establishing a delegation of authority under which the person retained some ability to influence the decision about how, when, or whether to purchase or sell securities.

[117] Rule 10b5–1(c)(1)(i)(A)(*2*).

[118] Rule 10b5–1(c)(1)(i)(A)(*3*).

[119] Rule 10b5–1(c)(1)(i)(B)(*2*).

could be determined pursuant to a formula set forth in the plan.[120] Alternatively, the date of a plan transaction could be controlled by the plan's administrator or investment manager, assuming that he or she is not aware of the material, nonpublic information at the time of executing the transaction, and the employee does not exercise influence over the timing of the transaction.[121]

One commenter noted that the proposed Rule 10b5–1 defenses were not co-extensive with exemptions from liability and reporting under Section 16 of the Exchange Act.[122] The Section 16 exemptive rules do not provide any exemption from liability under Section 10(b) and Rule 10b-5. The adoption of Rule 10b5–1 does not change this principle. However, we have drafted the Rule 10b5–1 defenses so that their conditions should not conflict with the conditions of the Section 16 exemptive rules.[123]

The proposal included an additional affirmative defense available only to trading parties that are entities. In response to comments, the rule as adopted clarifies that this defense is available to entities as an alternative to the other enumerated defenses described above.

Under this provision, an entity will not be liable if it demonstrates that the individual making the investment decision on behalf of the entity was not aware of the information, and that the entity had implemented reasonable policies and procedures to prevent insider trading.[124] The American Bar Association commented that the use in this rule of the term ''reasonable policies and procedures * * * to ensure'' against insider trading differed from the standard provided in Section 15(f) of the Exchange Act, which requires a registered broker or dealer to establish, maintain, and enforce written policies and procedures ''reasonably designed'' to prevent insider trading. As we noted in the Proposing Release, we derived this provision from the defense against liability codified in Exchange Act Rule 14e–3, regarding insider trading in a tender offer situation. Rule 14e–3, which pre-dates Exchange Act Section 15(f), also used the ''to ensure'' language. We are not aware, however, nor did commenters suggest, that use of that language has created any problems of compliance with Rule 14e–3. We believe, in any event, that the standards should be interpreted as essentially the same.[125]

B. Rule 10b5–2: Duties of Trust or Confidence in Misappropriation Insider Trading Cases

1. Background

As discussed more fully in the Proposing Release, an unsettled issue in insider trading law has been under what circumstances certain non-business relationships, such as family and personal relationships, may provide the duty of trust or confidence required under the misappropriation theory.[126] Case law has produced the following anomalous result. A family member who receives a ''tip'' (within the meaning of *Dirks*) and then trades violates Rule 10b–5. A family member who trades in breach of an express promise of confidentiality also violates Rule 10b–5. A family member who trades in breach of a reasonable expectation of confidentiality, however, does not necessarily violate Rule 10b–5.

As discussed more fully in the Proposing Release, we think that this anomalous result harms investor confidence in the integrity and fairness of the nation's securities markets. The family member's trading has the same impact on the market and investor confidence in the third example as it does in the first two examples. In all three examples, the trader's informational advantage stems from ''contrivance, not luck,'' and the informational disadvantage to other investors ''cannot be overcome with research or skill.'' [127] Additionally, the need to distinguish among the three types of cases may require an unduly intrusive examination of the details of particular family relationships. Accordingly, we believe there is good reason for the broader approach we adopt today for determining when family or personal relationships create ''duties of trust or confidence'' under the misappropriation theory.

Some of the commenters who submitted comment letters on Rule 10b5–2 supported the proposal.[128] Some offered suggestions or alternative approaches.[129] Others expressed concern that the rule would erode standards of personal and family privacy.[130] As discussed in the Proposing Release, the rule is not designed to interfere with particular family or personal relationships; rather, its goal is to protect investors and the fairness and integrity of the nation's securities markets against improper trading on the basis of inside information. Moreover, we do not believe that the rule will require a more intrusive examination of family relationships than would be required under existing case law without the rule. Current case law, such as *United States* v. *Chestman,*[131] and *United States* v. *Reed,*[132] already establishes a regime under which questions of liability turn on the nature of the details of the relationships between family members, such as their prior history and

[120] *Id.*

[121] Rule 10b5–1(c)(1)(i)(B)(*3*).

[122] *See* Letter of L.B. Foster Company addressing Rule 16b–3(c), the exemption from Section 16(a) reporting and Section 16(b) short-swing profit liability for most transactions under tax-conditioned plans.

[123] For example, it will be possible to set up a trust so that the trust transactions will be eligible for both the Rule 16a–8(b)(3) exemption and the Rule 10b5–1(c)(1)(i)(B)(*3*) defense. The Rule 10b5–1(c)(1)(i)(B)(*3*) defense also will be available for portfolio securities transactions in which a Section 16 insider is not deemed to have a pecuniary interest by virtue of Rule 16a–1(a)(2)(iii).

[124] Rule 10b5–1(c)(2).

[125] The Securities Industry Association commented that paragraph (c)(2) would not allow institutions to engage in ''dynamic hedging'' in circumstances where the institution's trading desk, while managing its proprietary position through a hedge, also was aware of material nonpublic information. We do not believe paragraph (c)(2) should provide a defense in those circumstances, if the same trader who is aware of the material information is making the trading decisions for the firm. However, paragraph (c)(1), which would allow a broker-dealer to manage risk by devising a formula for hedging at a time when it is not aware of material nonpublic information, could provide a defense for that activity. Alternatively, the broker-dealer could segregate its personnel and otherwise use information barriers so that the trader for the firm's proprietary account is not made aware of the material nonpublic information.

The Securities Industry Association also commented that the rule could unintentionally impede market liquidity when broker-dealers participate in shelf takedowns and other block transactions. The concern was that the rule would create uncertainty about whether a broker-dealer that held an order to execute a block transaction could continue to conduct regular market making in that same security. We believe that ordinary market making does not present insider trading concerns if a customer who places an order with a broker-dealer has an understanding that the broker-dealer may continue to engage in market making while working the order. Thus, a broker-dealer's ordinary market making would not be considered a ''misappropriation'' of the customer's information because it would not involve trading on the basis of the information in a manner inconsistent with the purpose for which it was given to the broker. If, however, a broker-dealer engaged in extraordinary trading for its own account when aware of unusually significant information regarding a customer order, it is possible, based on the facts and circumstances, that the broker-dealer would be held liable for insider trading or for front-running as defined by SRO rules.

[126] Proposing Release at part III.B.1.

[127] *O'Hagan,* 521 U.S. at 658–59.

[128] *See, e.g.,* Letters of the American Society of Corporate Secretaries, the American Corporate Counsel Association, and the North American Securities Administrators' Association.

[129] *See, e.g.,* Letter of the Association for Investment Management and Research.

[130] *See, e.g.,* Letters of the American Bar Association and the New York City Bar Association.

[131] 947 F.2d 551 (2d Cir. 1991) (en banc), *cert. denied,* 503 U.S. 1004 (1992).

[132] 601 F. Supp 685 (S.D.N.Y.), *rev'd on other grounds,* 773 F.2d 447 (2d Cir. 1985).

patterns of sharing confidences.[133] By providing more of a bright-line test for certain enumerated close family relationships, we believe the rule will mitigate, to some degree, the need to examine the details of particular relationships in the course of investigating suspected insider trading.

2. Provisions of Rule 10b5–2

We are adopting Rule 10b5–2 substantially as proposed. The rule sets forth a non-exclusive list of three situations in which a person has a duty of trust or confidence for purposes of the ''misappropriation'' theory of the Exchange Act and Rule 10b–5 thereunder.[134]

First, as proposed, we provide that a duty of trust or confidence exists whenever a person agrees to maintain information in confidence.[135]

Second, we provide that a duty of trust or confidence exists when two people have a history, pattern, or practice of sharing confidences such that the recipient of the information knows or reasonably should know that the person communicating the material nonpublic information expects that the recipient will maintain its confidentiality.[136] This is a ''facts and circumstances'' test based on the expectation of the parties in light of the overall relationship. Some commenters were concerned that, as proposed, this provision examined the reasonable expectation of confidentiality of the person communicating the material nonpublic information rather than examining the expectations of the recipient of the information and/or both parties to the communication.[137] We believe that mutuality was implicit in the proposed rule because an inquiry into the reasonableness of the recipient's expectation necessarily involves considering the relationship as a whole, including the other party's expectations. Nevertheless, we have revised the provision to make this mutuality explicit.

Two commenters suggested that this part of the rule be limited to a history, pattern, or practice of sharing *business* confidences.[138] Although we have determined not to adopt such a limitation, we note that evidence about the type of confidences shared in the past might be relevant to determining the reasonableness of the expectation of confidence.

Third, we are adopting as proposed a bright-line rule that states that a duty of trust or confidence exists when a person receives or obtains material nonpublic information from certain enumerated close family members: spouses, parents, children, and siblings. An affirmative defense permits the person receiving or obtaining the information to demonstrate that under the facts and circumstances of that family relationship, no duty of trust or confidence existed. Some commenters noted that the enumerated relationships do not include domestic partners, step-parents, or step-children. We have determined not to include these relationships in this paragraph, although paragraphs (b)(1) and (b)(2) could reach them. Our experience in this area indicates that most instances of insider trading between or among family members involve spouses, parents and children, or siblings; therefore, we have enumerated these relationships and not others.

IV. Paperwork Reduction Act

Certain provisions of Regulation FD contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[139] We published notice soliciting comments on the collection of information requirements in the Proposing Release, and submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections are (1) Form 8–K, and (2) Reg FD—Other Disclosure Materials.

We received two comments concerning our estimate that an issuer would make five disclosures under Regulation FD per year. The Bond Market Association stated that we provided no basis for our estimate.[140] The Securities Industry Association indicated that the basis for the estimate is unclear and suggested that the estimate is too low.[141] In the Proposing Release, we stated that we believe that issuers will make one disclosure per quarter plus, on average, one additional disclosure per year under Regulation FD. While we recognize that some issuers may make more than five annual FD disclosures, we also believe that a substantial number of issuers will make fewer than five FD disclosures annually.[142] As discussed in the Proposing Release, in many cases, information disclosed under Regulation FD would be information that an issuer ultimately was going to disclose to the public. Under Regulation FD, that issuer likely will not make any more public disclosure than it otherwise would, but it may make the disclosure sooner and now would be required to file or disseminate that information in a manner reasonably designed to provide broad, non-exclusionary distribution of the information to the public. We therefore believe that our estimate that issuers will make five disclosures per year under Regulation FD is appropriate.

The Bond Market Association also stated that the time required to accomplish disclosure will be longer than our estimate of five hours, but did not quantify how much longer.[143] As discussed in the Proposing Release, we estimated the average number of hours an entity spends completing Form 8–K by contacting a number of law firms and other persons regularly involved in completing the form. We therefore believe that our estimate is appropriate. We additionally believe it is reasonable to estimate that other forms of disclosure, such as a press release, will require no more (and probably less) than the preparation time of Form 8–K.

OMB approved the regulation's information collection requirements. Form 8–K (OMB Control No. 3235–0060) was adopted pursuant to Sections 13, 15, and 23 of the Exchange Act, and Regulation FD—Other Disclosure Materials (OMB Control No. 3235–0536) was adopted pursuant to Sections 13, 15, 23, and 36 of the Exchange Act. We are not collecting information pursuant to Regulation FD on Form 6–K (OMB Control No. 3235–0116), as initially proposed, because, as discussed in this Release, we have modified Regulation FD to exclude foreign private issuers from coverage. We have adopted Regulation FD with some additional modifications to the regulation as proposed. None of these modifications (other than the exclusion of foreign private issuers from coverage), however,

[133] *Reed,* for example, suggests that the types of confidences previously exchanged by family members (*e.g.,* whether or not they were business confidences), may make a difference in determining whether or not a confidential relationship exists.

[134] As stated in the Proposing Release and in the Preliminary Note to the rule, the law of insider trading is otherwise defined by judicial opinions construing Rule 10b–5. This rule does not address or modify the scope of insider trading law in any other respect.

[135] Rule 10b5–2(b)(1).

[136] Rule 10b5–2(b)(2).

[137] Letters of the American Bar Association and the DC Bar.

[138] Letters of the American Bar Association and the New York City Bar Association.

[139] 44 U.S.C. 3501 *et seq.*

[140] *See* Letter of The Bond Market Association.

[141] *See* Letter of the Securities Industry Association.

[142] Many issuers, for example, do not have analyst coverage, *see* Harrison Hong *et al., Bad News Travels Slowly: Size, Analyst Coverage, and the Profitability of Momentum Strategies,* 55 J. Finance 265 (2000), or do not have institutional shareholders.

[143] *See* Letter of The Bond Market Association.

has an impact on our burden hour estimate.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the disclosure requirements is mandatory. There is no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

V. Cost-Benefit Analysis

A. Regulation FD: Selective Disclosure

Regulation FD requires that when an issuer intentionally discloses material nonpublic information to securities market professionals or holders of the issuer's securities who are reasonably likely to trade on the basis of the information, it must simultaneously make public disclosure. When the issuer's selective disclosure of material nonpublic information is not intentional, the issuer must make public disclosure promptly.

1. Benefits

Regulation FD will provide several important benefits to investors and the securities markets as a whole. First, current practices of selective disclosure damage investor confidence in the fairness and integrity of the markets. When selective disclosure leads to trading by the recipients of the disclosure or trading by those whom these recipients advise, the practice bears a close resemblance to ordinary ''tipping'' and insider trading. The economic effects of the two practices are essentially the same; in both cases, a few persons gain an informational edge—and use that edge to profit at the expense of the uninformed—from superior access to corporate insiders, not through skill or diligence.[144] Thus, investors in many instances equate the practice of selective disclosure with insider trading.[145]

The Chicago Board Options Exchange also commented that selective disclosure is extremely detrimental to the markets, in that the unusual trading and increased volatility that result from selective disclosure can cause market makers substantial losses and potentially lead to wider and less liquid options markets.[146] This argument can be extended to the primary markets for the securities as well. Economic theory and empirical studies have shown that stock market transaction costs increase when certain traders may be aware of material, undisclosed information.[147] A reduction in these costs should make investors more willing to commit their capital.

The inevitable effect of selective disclosure, as indicated by numerous comment letters we received, is that individual investors lose confidence in the integrity of the markets because they perceive that certain market participants have an unfair advantage.[148] Although one commenter questioned this investor confidence argument,[149] we agree with the common sense view—expressed by both the Supreme Court and the Congress—that investors will lose confidence in a market that they believe is unfairly rigged against them.[150] Similarly, economic studies have provided support for the view that insider trading reduces liquidity, increases volatility, and may increase the cost of capital.[151]

Given the similarity of selective disclosure practices to ordinary tipping and insider trading, we believe that a regulation addressing selective disclosure of material information will promote benefits similar to insider trading regulation. Regulation FD will foster fairer disclosure of information to all investors, and increase investor confidence in market integrity. By enhancing investor confidence in the markets, therefore, the regulation will encourage continued widespread investor participation in our markets, enhancing market efficiency and liquidity, and more effective capital raising.

Second, the regulation likely also will provide benefits to those seeking unbiased analysis. This regulation will place all analysts on equal footing with respect to competition for access to material information. Thus, it will allow analysts to express their honest opinions without fear of being denied access to valuable corporate information being provided to their competitors. Analysts will continue to be able to use and benefit from superior diligence or acumen, without facing the prospect that other analysts will have a competitive edge solely because they say more favorable things about issuers.[152]

2. Costs

The regulation will impose some costs on issuers. First, issuers will incur some additional costs in making the public disclosures of material nonpublic information required by the regulation. Regulation FD gives issuers two options for making public disclosure. The issuer can: (1) file or furnish a Form 8-K; [153] or (2) disseminate the information through another method or combination of methods of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public (press release, teleconference, or web-conference).

Because the regulation does not require issuers to disclose material information (just to make any disclosure on a non-selective basis), we cannot predict with certainty how many issuers will actually make disclosures under this regulation. For purposes of the Paperwork Reduction Act, however, we base our estimate of the paperwork burden of the regulation on our belief that issuers will make on average five [154] public disclosures under Regulation FD per year.[155] Since there are

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[144] A recent academic paper finds evidence that analyst conference calls are associated with increased return volatility, trading volume, and trade size. The authors interpret these results as evidence that material information may be revealed in analyst conference calls and that larger investors likely are taking advantage of this information. Richard Frankel *et al., An Empirical Examination of Conference Calls as a Voluntary Disclosure Medium,* 37 J. Acct. Res. 133 (1999). Two commenters questioned the reliability of the assumptions made in the study. We believe the assumptions are reasonable approximations, although not perfect. In any event, we view these results as corroborative evidence, not as the basis for our conclusions. *See* Letters of American Corporate Counsel Association and The Bond Market Association.

[145] *See, e.g.,* Letters of Pieter Bergshoeff and Barbara Black.

[146] Letter of the Chicago Board Options Exchange.

[147] *See* I. Krinsky and J. Lee, *Earnings Announcements and the Components of the Bid-Ask Spread,* 51 J. of Fin. 1523 (1996); C.M. Lee, B. Mucklow and M.J. Ready, *Spreads, Depth and the Impact of Earnings Information: An Intraday Analysis,* 6 Rev. of Fin. Stud. 345 (1993); A.S. Kyle, *Continuous Auctions and Insider Trading,* 53 Econometrica 1315 (1985); L.R. Glosten and P. Milgrom, *Bid, Ask and Transaction Prices in a Specialist Market with Heterogeneously Informed Traders,* 14 J. of Fin. Econ. 71 (1985).

[148] *See, e.g.,* Letters of IBM, A.T. Bigelow, and Thomas Brandon.

[149] Letter of Joseph McLaughlin.

[150] *See United States* v. *O'Hagan*, and H.R. Rep. No. 100–910, *supra*, note 6.

[151] *See* M.J. Fishman and K.M. Hagerty, *Insider Trading and the Efficiency of Stock Prices,* 23 Rand J. of Econ. 106 (1992); M. Manove, *The Harm From Insider Trading and Informed Speculation*, 104 Q.J. of Econ. 823 (1989).

[152] The Securities Industry Association disputed the significance of this benefit. Given the widespread reports, cited above and in the Proposing Release, of analysts' concerns about continuing access to corporate insiders, we continue to believe this is a significant issue.

[153] 17 CFR 249.308.

[154] We anticipate that many issuers will make one disclosure each quarter under Regulation FD. We also assume that issuers will, on average, make on additional disclosure per year.

[155] In many cases, information disclosed under Regulation FD would be information that an issuer was ultimately going to disclose to the public.

Continued

approximately 13,000 issuers affected by this regulation, we estimate that the total number of disclosures under Regulation FD per year will be 65,000.

If an issuer files a Form 8–K, we estimate that the issuer would incur, on average, five burden hours per filing. This estimate is based on current burden hour estimates under the Paperwork Reduction Act for filing a Form 8–K and the staff's experience with such filings. For the purposes of the Paperwork Reduction Act, we estimate that in preparing Form 8–Ks approximately 25% of the burden hours are expended by the company's internal professional staff, and the remaining 75% by outside counsel. Assuming a cost of $85/hour for in-house professional staff and $175/hour [156] for outside counsel, the total cost would be $762.50 per filing. These assumptions reflect the greater reliance on outside lawyers in preparing documents to be filed with the Commission.

We have no direct data on which to base estimates of the costs of the other disclosure options. However, we anticipate that other methods of disclosure, such as press releases, may require less preparation time than a Form 8–K and will be prepared primarily, if not exclusively, by the company's internal staff.[157] Moreover, if the costs of another method of disclosure are less than the costs of filing the Form 8–K, we presume issuers will choose another method of public disclosure. Issuers may, however, choose to use methods of dissemination with higher out-of-pocket costs, presumably because they believe these methods provide additional benefits to the issuer or investor for which they are willing to pay. Given that we estimate that there will be 65,000 disclosures under Regulation FD per year at an approximate cost ranging from $537.50 to $762.50 per disclosure, we estimate that the total paperwork burden of preparing the information for disclosure per year will be approximately $34,937,500 to $49,562,500.[158]

We received several comments concerning the costs of the disclosure options provided by Regulation FD. Two commenters suggested that the benefits of the regulation outweigh the costs of making disclosure.[159] One commenter suggested that the direct costs to issuers of complying with the regulation will exceed the $33 million that we estimated in the Proposing Release.[160] This commenter suggested that there is no basis for our estimate that issuers will make on average five disclosures per year, and that our estimate that it will take five hours to make disclosure under the regulation is too low, due to legal involvement with each corporate communication. This commenter additionally stated that the cost estimates for in-house and outside legal advice do not reflect the current or future marketplace and that the estimates do not consider all of the people involved in the disclosure process or the costs of a decision not to make disclosure.[161] Another commenter stated that our estimate of, on average, five disclosures per issuer per year is too low. This commenter also said that it could not quantify the costs of Regulation FD.[162]

Our estimate of five disclosures per issuer is based on several factors. First, we believe that for a large group of issuers, five disclosures reflects the need to make one FD disclosure per quarter, and allows for one additional miscellaneous FD disclosure. At the same time, however, we recognize that there will be a wide variation among disclosure practices at different issuers. Some issuers may average more annual FD disclosures. A substantial number of other issuers, however, depending on their industry, shareholder composition, or level of analyst coverage,[163] may make fewer if any FD disclosures annually. Thus, we believe the estimate adequately allows for a wide variety of situations. We, therefore, believe that five is a reasonable estimate of the average number of disclosures each issuer will make annually under Regulation FD. We also believe it is reasonable to assume that the costs of making disclosure via some other method, such as a press release, will not be greater than the costs of filing a Form 8–K.

While it is possible that issuers may incur some cost in connection with the implementation of corporate policy relating to disclosure, as well as decisions *not* to make disclosure under the regulation, we believe that any additional costs would not be substantial. Many issuers already consult with in-house and/or outside counsel regarding their disclosure obligations under the federal securities laws. Moreover, as we have narrowed the definition of ''persons acting on behalf of the issuer'' to cover only those who regularly interact with securities market professionals and security holders, the issuer personnel whose disclosures will be covered by the regulation are those who are most likely to be well-versed in disclosure issues and practiced in making judgments on these issues. Further, to the extent that issuers already have policies in place to cover the types of disclosures those personnel can make, we expect the additional costs associated with compliance to be small. Thus, after careful consideration of the comments, we have determined that our estimates of the costs of making disclosure are appropriate.

One commenter asserted that our cost-benefit analysis does not consider indirect costs on capital formation.[164] These costs, according to this commenter, include less liquidity, missed market opportunities, and the introduction of market inefficiencies. One such market inefficiency, according to the commenter, might result from confidentiality agreements becoming a regular practice, thereby excluding some institutions that cannot or will not agree to the restrictions in such agreements. This commenter also suggested a cost resulting from issuers' involving their attorneys in each corporate communication. This commenter did not quantify these purported costs.

We believe that this comment does not adequately take into account the flexibility provided in Regulation FD for issuer compliance. The regulation gives issuers a variety of ways to comply, and we assume that an issuer will be able to determine the least costly methods of compliance for its particular circumstances. Moreover, as discussed in the Release, we have significantly narrowed the scope of the regulation in ways that should reduce both direct and indirect compliance costs; for example, we have narrowed the types of

Under Regulation FD, that issuer is not going to make any more public disclosure than it otherwise would, but it may make the disclosure sooner and now would be required to file or disseminate that information in a manner reasonably designed to provide broad, non-exclusionary distribution of the information to the public.

[156] In the Proposing Release, we assumed a cost of $125 per hour for outside legal advice. We have revised that estimate and now assume that outside legal advice will cost $175 per hour.

[157] Accordingly, in the Proposing Release, we assumed that 25% of the burden would be borne by outside counsel and 75% by in-house professional staff. This balance reflects our belief that many issuers will make disclosures by some disclosure option other than by a Form 8–K that will require less time from outside lawyers. Using these assumptions, the total approximate cost of a Regulation FD disclosure would be $537.50.

[158] In the Proposing Release, we estimated the total paperwork burden to be approximately $33,250,000. In addition to the changes noted above in notes 156 and 157, the revised figure also reflects a reduction in paperwork burden due to the exclusion from coverage of foreign private issuers under Regulation FD.

[159] Letters of Stephen Jones and Gretchen Sprigg Wisehart.

[160] Letter of the Bond Market Association.

[161] *Id.*

[162] Letter of the Securities Industry Association.

[163] *See* Harrison Hong *et al.*, *supra* note 142.

[164] Letter of The Bond Market Association.

communications covered, and excluded communications made in connection with most registered securities offerings. Further, as discussed above, we believe that the regulation will encourage continued widespread investor participation in our markets, which will enhance market efficiency and liquidity, and foster more effective capital raising. Thus, we have carefully considered whether the regulation will increase the costs of capital formation, and we believe it may, in fact, reduce such costs.[165]

The regulation may also lead to some increased costs for issuers resulting from new or enhanced systems and procedures for disclosure practices. As indicated by some commenters,[166] we believe that many, if not most, issuers already have internal procedures for communicating with the public; for many issuers, therefore, new procedures to prevent selective disclosures will not be needed. There might be a cost to these issuers, however, for enhancing and strengthening existing procedures to safeguard against selective disclosures that are not intentional to ensure prompt public release when such disclosures do occur.

Some commenters suggested that disclosure methods utilizing Internet technology impose minimal costs.[167] In particular, one commenter noted that there are several services that make the audio signal from conference calls available over the Internet at no cost.[168] Another commenter disagreed, and stated that some of the methods of making disclosure, such as webcasts, are costly.[169] This commenter suggested that additional costs might include those associated with new technologies, but provided no quantitative data associated with any such costs.[170] As stated above, we believe that making disclosure by a method other than a Form 8–K will likely be less costly than making disclosure by filing a Form 8–K. We believe that issuers will use new technology to the extent that it is cost-effective to do so; in any event, no issuer will be required to expend more on disclosures utilizing new technology than it would cost to make disclosure by filing a Form 8–K.

One potential cost of the regulation that we have identified is the risk that the regulation might ''chill'' corporate disclosures to analysts, investors, and the media. We recognized the concern that issuers may speak less often out of fear of liability based on a post hoc assessment that disclosed information was material, and that if such a chilling effect resulted from Regulation FD, there would be a cost to overall market efficiency and capital formation.

A number of commenters also raised the concern about a chilling effect as a significant potential cost of Regulation FD, and several of these suggested that we were underestimating this effect.[171] A common theme among these commenters was that the regulation would result in the flow of less information to the marketplace, rather than more, and that the cost of this effect would be greater surprise and volatility.[172] However, these commenters were unable to quantify these costs. Moreover, other commenters, including issuers who would be subject to the regulation, did not necessarily agree that their communications would be significantly chilled.[173]

In response to the concerns about a diminished flow of information, as discussed elsewhere in this Release, we have made several significant modifications that we believe reduce the likelihood of a chilling effect. These modifications include narrowing the scope of the regulation so that it does not apply to all communications with persons outside the issuer, narrowing the types of issuer personnel covered by the regulation to senior officials and those who would normally be expected to communicate with securities market professionals or security holders, and clarifying that where the regulation requires ''knowing or reckless'' conduct, liability will attach only when an issuer's personnel know or are reckless in not knowing that the information selectively disclosed is both material and nonpublic. Additionally, as discussed below, we have added an express provision in the regulation's text designed to remove any doubt that private liability will not result from a Regulation FD violation.

In addition, there are numerous practices that issuers may employ to continue to communicate freely with analysts and investors, while becoming more careful in how they disclose information. Moreover, the regulation only covers the selective disclosure of material nonpublic information; the level of non-material information available to the market need not decrease. We believe issuers will have strong reasons to continue releasing information given the market demand for information and a company's desire to promote its products and services. One economic study has found that more public disclosure is associated with factors that have been shown to reduce the cost of capital.[174]

Finally, commenters expressed concern that the regulation would increase the risk of private liability. Regulation FD is designed to create duties only under Sections 13(a) and 15(d) of the Exchange Act and Section 30 of the Investment Company Act, and does not create new duties under Section 10(b) of the Exchange Act. As discussed, we have added an express provision to the regulation stating that a failure to make a disclosure required solely by Regulation FD will not result in a violation of Rule 10b–5.

B. Rule 10b5–1: Trading ''On The Basis Of'' Material Nonpublic Information

Rule 10b5–1 would define when a sale or purchase of a security occurred ''on the basis of'' material nonpublic information. Under the rule, a person trades ''on the basis of'' material nonpublic information if the person making the purchase or sale was aware of the material nonpublic information at the time of the purchase or sale. However, the rule provides exclusions for certain situations in which a trade resulted from a pre-existing plan, contract, or instruction that was made in good faith.

1. Benefits

We anticipate two significant benefits arising from Rule 10b5–1. First, the rule should increase investor confidence in the integrity and fairness of the market because it clarifies and strengthens existing insider trading law. Second, the rule will benefit corporate insiders by providing greater clarity and certainty on how they can plan and structure securities transactions. The rule provides specific guidance on how a person can plan future transactions at a time when he or she is not aware of material nonpublic information without fear of incurring liability. We believe that this guidance will make it easier for corporate insiders to conduct themselves in accordance with the laws against insider trading.

[165] *See* Fishman and Hagerty; Manove, *supra* note 151.

[166] *See, e.g.,* Letters of Huntington Bancshares and Charles Schwab.

[167] *See, e.g.,* Letters of Bradley Richardson and Scott Lawton.

[168] Letter of Net2000.

[169] Letter of the National Association of Real Estate Investment Trusts.

[170] *Id.*

[171] *See, e.g.,* Letters of the Securities Industry Association, The Bond Market Association, and the American Bar Association.

[172] *See, e.g.,* Letters of the Securities Industry Association and The Bond Market Association.

[173] *See* Letters of Charles Schwab and Net2000.

[174] R.J. Lundholm and M.H. Lang, *Corporate Disclosure Policy and Analyst Behavior*, 71 The Acct. Rev. 467 (1996).

2. Costs

The rule does not require any particular documentation or recordkeeping by insiders, although it would, in some cases, require a person to document a particular plan, contract, or instruction for trading if he or she wished to demonstrate an exclusion from the rule. Some commenters suggested that the proposed affirmative defenses did not allow for certain commonly used mechanisms for trading securities, such as issuer repurchase plans. If the rule prohibited, for example, issuers from repurchasing their securities, a cost might have resulted. As discussed elsewhere in this Release, however, we have modified the rule to provide appropriate flexibility to persons who wish to structure securities trading plans and strategies when they are not aware of material nonpublic information. Any entity that sought to rely on the affirmative defense in paragraph (c)(2) for institutional traders would be required to comply with the specific provisions of that paragraph, including implementing reasonable policies and procedures to prevent insider trading. We believe that most entities to whom this affirmative defense would be relevant—*i.e.,* broker-dealers and investment advisers—already have procedures in place, because of existing statutory requirements.[175] Thus, as adopted, we do not believe that any costs that may be imposed by Rule 10b5–1 will be significant.[176]

C. Rule 10b5–2: Duties of Trust or Confidence in Misappropriation Insider Trading Cases

1. Benefits

Rule 10b5–2 enumerates three non-exclusive bases for determining when a person receiving information is subject to a ''duty of trust or confidence'' for purposes of the misappropriation theory of insider trading. Two principal benefits are likely to result from this rule. First, the rule will provide greater clarity and certainty to the law on the question of when a family relationship will create a duty of trust or confidence. Second, the rule will address an anomaly in current law under which a family member receiving material nonpublic information may exploit it without violating the prohibition against insider trading. By addressing this potential gap in the law, the rule will enhance investor confidence in the integrity of the market.

2. Costs

We do not attribute any costs to Rule 10b5–2 and no commenter suggested otherwise.

VI. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Sections 2(b) of the Securities Act, 3(f) of the Exchange Act, and 2(c) of the Investment Company Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, also to consider whether the action will promote efficiency, competition, and capital formation. As discussed above, we believe that Regulation FD and Rules 10b5–1 and 10b5–2 will bolster investor confidence in the integrity of the markets and the fairness of the disclosure process. By enhancing investor confidence and participation in the markets, these rules should increase liquidity and help to reduce the costs of capital. Accordingly, the proposals should promote capital formation and market efficiency.[177]

Section 23(a) of the Exchange Act requires the Commission, when adopting rules under the Exchange Act, to consider the impact on competition of any rule it adopts. Several commenters suggested that Regulation FD might have some effects on competition. One commenter suggested that the regulation would have a negative effect on competition because analysts operating independently of, and in competition with, each other can more effectively pursue an independent line of inquiry and ferret out negative information that management would rather not disclose. According to this commenter, ''[l]eveling the playing field for analysts, as among themselves and vis-a-vis the general public, will undermine the great advantages of the current system.'' [178] We disagree. We believe, to the contrary, that the regulation will encourage competition because it places all analysts on equal competitive footing with respect to access to material information. Analysts will continue to be able to use and benefit from superior diligence or acumen, without facing the prospect that other analysts will have a competitive edge simply because they have been favored with selective disclosure. Additionally, analysts will be able to express their honest opinions without fear of being denied access to material corporate information.

Some commenters also suggested that it would be anti-competitive and unfair to exempt ratings agencies and/or the news media from the regulation's coverage.[179] According to these commenters, reporters are competitors of analysts. We believe that there is a significant difference between analysts and news reporters, and therefore disagree with this comment. Reporters gather information for the purpose of reporting the news and informing the public; generally, their reports are widely disseminated. Similarly, ratings agencies make their ratings reports public when completed. Analysts, by contrast, gather and report information to be used for securities trading; their reports are typically available to a limited, usually paying, audience.

As discussed more fully above, we have decided to exclude foreign private issuers from the Regulation FD disclosure requirements in light of the fact that the Commission will be undertaking a comprehensive review of the reporting requirements of foreign private issuers. To the extent any anti-competitive effect may arise from exempting foreign private issuers from the regulation, we believe any such burden would be necessary and appropriate for the protection of investors. Overall, we do not believe that the regulation and rules will have any anti-competitive effects.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with the Regulatory Flexibility Act (''RFA''). It relates to Regulation FD, Rule 10b5–1, and Rule 10b5–2 under the Exchange Act, as amended. The regulation and rules address the selective disclosure of material nonpublic information and clarify two unsettled issues under current insider trading law.

A. Need for the Regulation and Rules

The new regulation and rules address three separate issues. Regulation FD

[175] *See* Section 15(f) of the Exchange Act (15 U.S.C. 78o(f)) and Section 204A of the Investment Advisers Act (15 U.S.C. 80b–4a).

[176] In the Proposing Release, we asked whether we should require that contracts, instructions, or trading plans be approved by counsel. Commenters noted that such a requirement would impose costs. As adopted, the rule does not impose this requirement.

[177] We find that the exemption of issuers from the obligation to make public disclosure by furnishing or filing Forms 8–K on the condition that they disseminate the information through another method that is reasonably designed to provide broad, non-exclusionary distribution is necessary or appropriate in the public interest and is consistent with the protection of investors.

[178] Letter of the Securities Industry Association.

[179] Letters of the Securities Industry Association and Joseph McLaughlin.

addresses the problem of issuers making selective disclosure of material nonpublic information to analysts or particular investors before making disclosure to the investing public. Rules 10b5–1 and 10b5–2 address two unsettled issues in insider trading case law: (1) when insider trading liability arises in connection with a person's ''use'' or ''knowing possession'' of material nonpublic information; and (2) when a family or other non-business relationship can give rise to liability under the misappropriation theory of insider trading. By addressing these issues, we believe the new regulation and rules will enhance investor confidence in the fairness and integrity of the securities markets.

Regulation FD requires that when an issuer intentionally discloses material nonpublic information it do so through public disclosure, not selective disclosure. When an issuer has made a non-intentional selective disclosure, Regulation FD requires the issuer to make prompt public disclosure thereafter. The regulation provides for several alternative methods by which an issuer can make the required public disclosure. We believe that this new regulation will provide for fairer and more effective disclosure of important information by issuers to the investing public.

Rule 10b5–1 provides a general rule that liability arises when a person trades while ''aware'' of material nonpublic information. Rule 10b5–1 also provides affirmative defenses from the general rule to allow persons to structure securities trading plans and strategies when they are not aware of material nonpublic information, and follow through with the trades pursuant to those plans and strategies even after they become aware of material nonpublic information. We believe Rule 10b5–1 clarifies an important issue in insider trading law, and will enhance investor confidence in market integrity.

Rule 10b5–2 defines the scope of ''duties of trust and confidence'' for purposes of the misappropriation theory in a manner that more appropriately serves the purposes of insider trading law. Rule 10b5–2 will have no direct effect on small entities.

B. Significant Issues Raised by Public Comment

In the Proposing Release, we solicited comments on the Initial Regulatory Flexibility Analysis (''IRFA''). In particular, we requested comments regarding: (i) The number of small entity issuers that may be affected by the proposed regulation and rules; (ii) the existence or nature of the potential impact of the proposed regulation and/or rules on small entity issuers discussed in the analysis; and (iii) how to quantify the impact of the proposed regulation and rules. Commentators were asked to describe the nature of any impact and provide empirical data supporting the extent of the impact.

We did not receive any comments addressing the IRFA for proposed Regulation FD and Rules 10b5–1 and 10b5–2. We did receive several comments addressing the potential impact of proposed Regulation FD on small entity issuers and whether Regulation FD should treat them the same as other issuers.

One issue affecting small entities on which we received significant comment was the method of ''public disclosure'' required by Regulation FD. One commenter said that Regulation FD's public disclosure requirement should recognize the particular circumstances of the issuer; in this commenter's view, because smaller issuers often have more difficulty obtaining coverage, Regulation FD's public disclosure requirement could be qualified to require those efforts reasonable under the circumstances of the issuer and the market for its securities. This commenter noted that it would help address this issue if Regulation FD's public disclosure requirement could be satisfied by a website posting.[180] Another commenter said that Regulation FD's provision for public disclosure through a press release is not appropriate because this method does little, if anything, to provide investors with information regarding smaller companies.[181]

In response to these comments and others, we have modified the definition of ''public disclosure'' in the final regulation. The final regulation provides greater flexibility to an issuer to determine what is an appropriate means of making public disclosure in light of its particular circumstances. The final regulation permits issuers, including small entity issuers, to choose a method (or a combination of methods) of public disclosure reasonably designed to provide broad, non-exclusionary distribution of information to the public.

With respect to the regulation's application to disclosures of ''material'' nonpublic information, two commenters noted that what might be material to a small company might not be material to a large company.[182] As noted elsewhere in the Release, the general materiality standard has always been understood to encompass the necessary flexibility to fit the circumstances of each case. Thus, we believe the use of a materiality standard in Regulation FD appropriately takes into account the differences between small and large issuers.

C. Small Entities Subject to the Regulation and Rules

Regulation FD will affect issuers and closed-end investment companies that are small entities.[183] We estimate there are between approximately 1,000 to 2,000 issuers subject to the reporting requirements of the Exchange Act that satisfy the definition of small entity.[184] We also estimate that there are approximately 62 closed-end investment companies that may be considered small entities subject to Regulation FD.[185]

Rule 10b5–1 will apply to any small entities that engage in securities trading while aware of inside information and therefore are subject to existing insider trading prohibitions of Rule 10b–5. This could include issuers, broker-dealers,[186] investment advisers,[187] and investment companies. We estimate that there are approximately 913 broker-dealers that may be considered small entities.[188] We estimate that there are approximately

[180] Letter of the American Bar Association.

[181] Letter of VirtualFund.com.

[182] Letters of the American Society of Corporate Secretaries and the Securities Industry Association.

[183] Exchange Act Rule 0–10(a) defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year 17 CFR 240.0–10(a). Investment Company Act Rule 0–10(a) defines an investment company as a ''small business'' or ''small organization'' if it, ''together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.'' 17 CFR 270.0–10(a).

[184] In the IRFA, we estimated the number of issuers, other than investment companies, that may be considered small entities as approximately 830. The FRFA number represents the increased number of issuers filing Exchange Act reports pursuant to the NASD's new requirements implemented under Rule 6530 during the last 18 months.

[185] The Commission bases its estimate on information from Lipper Directors' Analytical Data, Lipper Closed-End Fund Performance Analysis Service, and reports in investment companies file with the Commission on Form N–SAR.

[186] Exchange Act Rule 0–10(c) defines a broker-dealer as a small entity if it had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared and it is not affiliated with any person (other than a natural person) that is not a small entity. 17 CFR 240.0–10(c).

[187] Investment Advisers Act Rule 0–7 defines an investment adviser as a small entity if it: (i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) is not in a control relationship with another investment adviser that is not a small entity. 17 CFR 275.0–7.

[188] The Commission bases its estimate on information from FOCUS Reports.

1,500 investment advisers that may be considered small entities.[189] We estimate that there are approximately 241 investment companies that may be considered small entities.[190] The Commission cannot estimate with certainty how many small entities engage in securities trading while aware of inside information and no comments were received on this point.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

1. Regulation FD

When an issuer, large or small, discloses material nonpublic information, Regulation FD requires it to file or furnish a Form 8–K, or to otherwise make public disclosure of information through another method (or combination of methods) of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public.

The regulation's ''public disclosure'' requirement would give small entity issuers flexibility in how to disseminate information (such as via telephonic or Internet conference calls). This flexible performance element enables small entity issuers the freedom to select the method (or combination of methods) of public disclosure that best suits their business operations while achieving broad dissemination of the information. Accordingly, we do not think the requirement will have a disproportionate affect on small entity issuers. In addition, by allowing an issuer to use a method ''or combination of methods'' of disclosure, Regulation FD recognizes that it may not always be possible for an issuer to rely on a single method of disclosure as reasonably designed to effect broad non-exclusionary public disclosure.

2. Rule 10b5–1

Rule 10b5–1 does not directly impose any recordkeeping or compliance requirements on small entities. To the extent that an entity engaged in securities trading wished to rely on an affirmative defense, it might document the existence of a pre-existing plan to trade. More generally, any entity, large or small, that sought to rely on the affirmative defense in paragraph (c)(2) for institutional traders would be required to comply with the specific provisions of that paragraph, including implementing reasonable policies and procedures to prevent insider trading. We believe that most entities to whom this affirmative defense would be relevant—*i.e.,* broker-dealers and investment advisers—already have procedures in place, because of existing statutory requirements.[191]

3. Rule 10b5–2

Rule 10b5–2 affects individuals and not entities. Accordingly, we believe that Rule 10b5–2 would not have a significant economic impact on a substantial number of small entities.

E. Agency Action To Minimize Effect on Small Entities

As required by Sections 603 and 604 of the RFA, the Commission has considered the following alternatives to minimize the economic impact of Regulation FD and Rule 10b5–1 on small entities: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the regulation and the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the regulation or rule, or any part thereof, for small entities.

With respect to Regulation FD, we continue to believe that different compliance or reporting requirements or timetables for small entities would interfere with achieving the primary goal of protecting investors. For the same reason, we believe that exempting small entities from coverage of Regulation FD, in whole or part, is not appropriate. In addition, we have concluded that it is not feasible to further clarify, consolidate, or simplify the regulation for small entities. We have, however, used performance elements in Regulation FD in two ways. Regulation FD does not require that an issuer satisfy its obligations in accordance with any specific design, but rather allows each issuer, including small entities, flexibility to select the method (or combination of methods) of compliance that is most efficient and appropriate for its business operations. First, each issuer can select what method(s) to use to avoid selective disclosure (*e.g.,* by designating which authorized official(s) will speak with analysts). Second, each issuer can choose what method(s) to use for ''public disclosure'' (*e.g.,* filing or furnishing a Form 8–K, issuing a press release, holding a conference call transmitted telephonically or over the Internet, etc.). We do not believe different performance standards for small entities would be consistent with the purpose of Regulation FD.

We have made a number of changes to proposed Regulation FD that we believe decrease its impact on all issuers, including small entity issuers.

First, we have narrowed the scope of communications covered by Regulation FD so it does not apply to all communications to persons outside the issuer. As revised, the regulation applies only to communications made to securities market professionals and to holders of the issuer's securities under circumstances in which it is reasonably foreseeable that the security holder will trade on the basis of the information.

Second, we have narrowed the definition of ''person acting on behalf of the issuer'' to senior officials and those persons who normally would be expected to communicate with securities market professionals or with holders of the issuer's securities.

Third, to remove any doubt that private liability will not result from a Regulation FD violation, we have added an express provision in the regulation text that a failure to make a disclosure required solely by Regulation FD will not result in a violation of Rule 10b–5.

Fourth, to clarify that a reasonable, but mistaken, determination that information was not material will not be second-guessed, the regulation text has been revised to provide that the materiality determination is subject to a recklessness standard.

Fifth, Regulation FD has been revised so that a failure to comply with its provisions will not disqualify an issuer from use of short-form registration for securities offerings or affect security holders' ability to resell under Securities Act Rule 144.

Sixth, Regulation FD has been revised to exclude communications made in connection with most securities offerings registered under the Securities Act.

With respect to Rule 10b5–1, we continue to believe that different compliance requirements for small entities would interfere with achieving the primary goal of protecting investors. For the same reason, we believe that exempting small entities from coverage of Rule 10b5–1, in whole or part, is not appropriate. In addition, we have concluded that it is not feasible to further clarify, consolidate, or simplify the rule for small entities. First, the aspects of Rule 10b5–1 that indirectly involve compliance requirements are for

[189] The Commission bases its estimate on information from the Commission's database of registration information.

[190] The Commission bases its estimate on information from Lipper Directors' Analytical Data and reports investment companies file with the Commission on Form N–SAR.

[191] *See* Section 15(f) of the Exchange Act (15 U.S.C. 78o(f)) and Section 204A of the Investment Advisers Act (15 U.S.C. 80b–4a).

affirmative defenses to the general rule and therefore not required to comply with Rule 10b5–1. Second, we have used performance elements for the affirmative defense based on an institutional investor implementing proper informational barriers set forth in paragraph (c)(2) of Rule 10b5–1. If an entity decides to assert this affirmative defense, Rule 10b5–1 does not require that it satisfy its obligations under the affirmative defense in accordance with any specific design, but rather allows it flexibility to select which measure(s) it wants to put in place to satisfy the elements of the affirmative defense. We do not believe different performance standards for small entities would be consistent with the purpose of the rule.

We have made changes to Rule 10b5–1 that we believe will decrease its impact on small entities. First, a person may use limit orders in a pre-existing contract, plan, or instruction created while the person was not aware of any inside information. Second, Rule 10b5–1 as adopted provides that the price, amount, and date of a transaction do not have to be specified where the purchase or sale that occurred was the result of the pre-existing contract, plan, or instruction.

VIII. Statutory Bases and Text of Amendments

We are adopting Regulation FD, the amendments to Form 8–K, Rule 10b5–1, and Rule 10b5–2 under the authority set forth in Sections 10, 19(a), and 28 of the Securities Act, Sections 3, 9, 10, 13, 15, 23, and 36 of the Exchange Act, and Section 30 of the Investment Company Act.

List of Subjects

17 CFR Part 240

Fraud, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 243 and 249

Securities, Reporting and recordkeeping requirements.

Text of Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.10b5–1 is added after Section 240.10b–5 to read as follows:

§ 240.10b5–1 Trading ''on the basis of'' material nonpublic information in insider trading cases.

Preliminary Note to § 240.10b5–1: This provision defines when a purchase or sale constitutes trading ''on the basis of'' material nonpublic information in insider trading cases brought under Section 10(b) of the Act and Rule 10b–5 thereunder. The law of insider trading is otherwise defined by judicial opinions construing Rule 10b–5, and Rule 10b5–1 does not modify the scope of insider trading law in any other respect.

(a) *General.* The ''manipulative and deceptive devices'' prohibited by Section 10(b) of the Act (15 U.S.C. 78j) and § 240.10b–5 thereunder include, among other things, the purchase or sale of a security of any issuer, on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information.

(b) *Definition of ''on the basis of.''* Subject to the affirmative defenses in paragraph (c) of this section, a purchase or sale of a security of an issuer is ''on the basis of'' material nonpublic information about that security or issuer if the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale.

(c) *Affirmative defenses.* (1)(i) Subject to paragraph (c)(1)(ii) of this section, a person's purchase or sale is not ''on the basis of'' material nonpublic information if the person making the purchase or sale demonstrates that:

(A) Before becoming aware of the information, the person had:

(1) Entered into a binding contract to purchase or sell the security,

(2) Instructed another person to purchase or sell the security for the instructing person's account, or

(3) Adopted a written plan for trading securities;

(B) The contract, instruction, or plan described in paragraph (c)(1)(i)(A) of this Section:

(1) Specified the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold;

(2) Included a written formula or algorithm, or computer program, for determining the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold; or

(3) Did not permit the person to exercise any subsequent influence over how, when, or whether to effect purchases or sales; provided, in addition, that any other person who, pursuant to the contract, instruction, or plan, did exercise such influence must not have been aware of the material nonpublic information when doing so; and

(C) The purchase or sale that occurred was pursuant to the contract, instruction, or plan. A purchase or sale is not ''pursuant to a contract, instruction, or plan'' if, among other things, the person who entered into the contract, instruction, or plan altered or deviated from the contract, instruction, or plan to purchase or sell securities (whether by changing the amount, price, or timing of the purchase or sale), or entered into or altered a corresponding or hedging transaction or position with respect to those securities.

(ii) Paragraph (c)(1)(i) of this section is applicable only when the contract, instruction, or plan to purchase or sell securities was given or entered into in good faith and not as part of a plan or scheme to evade the prohibitions of this section.

(iii) This paragraph (c)(1)(iii) defines certain terms as used in paragraph (c) of this Section.

(A) *Amount.* ''Amount'' means either a specified number of shares or other securities or a specified dollar value of securities.

(B) *Price.* ''Price'' means the market price on a particular date or a limit price, or a particular dollar price.

(C) *Date.* ''Date'' means, in the case of a market order, the specific day of the year on which the order is to be executed (or as soon thereafter as is practicable under ordinary principles of best execution). ''Date'' means, in the case of a limit order, a day of the year on which the limit order is in force.

(2) A person other than a natural person also may demonstrate that a purchase or sale of securities is not ''on the basis of'' material nonpublic information if the person demonstrates that:

(i) The individual making the investment decision on behalf of the person to purchase or sell the securities was not aware of the information; and

(ii) The person had implemented reasonable policies and procedures, taking into consideration the nature of the person's business, to ensure that individuals making investment decisions would not violate the laws

prohibiting trading on the basis of material nonpublic information. These policies and procedures may include those that restrict any purchase, sale, and causing any purchase or sale of any security as to which the person has material nonpublic information, or those that prevent such individuals from becoming aware of such information.

3. Section 240.10b5–2 is added to read as follows:

§ 240.10b5–2 Duties of trust or confidence in misappropriation insider trading cases.

Preliminary Note to § 240.10b5–2: This section provides a non-exclusive definition of circumstances in which a person has a duty of trust or confidence for purposes of the ''misappropriation'' theory of insider trading under Section 10(b) of the Act and Rule 10b–5. The law of insider trading is otherwise defined by judicial opinions construing Rule 10b–5, and Rule 10b5–2 does not modify the scope of insider trading law in any other respect.

(a) *Scope of Rule.* This section shall apply to any violation of Section 10(b) of the Act (15 U.S.C. 78j(b)) and § 240.10b–5 thereunder that is based on the purchase or sale of securities on the basis of, or the communication of, material nonpublic information misappropriated in breach of a duty of trust or confidence.

(b) *Enumerated ''duties of trust or confidence.''* For purposes of this section, a ''duty of trust or confidence'' exists in the following circumstances, among others:

(1) Whenever a person agrees to maintain information in confidence;

(2) Whenever the person communicating the material nonpublic information and the person to whom it is communicated have a history, pattern, or practice of sharing confidences, such that the recipient of the information knows or reasonably should know that the person communicating the material nonpublic information expects that the recipient will maintain its confidentiality; or

(3) Whenever a person receives or obtains material nonpublic information from his or her spouse, parent, child, or sibling; *provided,* however, that the person receiving or obtaining the information may demonstrate that no duty of trust or confidence existed with respect to the information, by establishing that he or she neither knew nor reasonably should have known that the person who was the source of the information expected that the person would keep the information confidential, because of the parties' history, pattern, or practice of sharing and maintaining confidences, and because there was no agreement or understanding to maintain the confidentiality of the information.

4. Part 243 is added to read as follows:

PART 243—REGULATION FD

Sec.

Authority: 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a–29, unless otherwise noted.

§ 243.100 General rule regarding selective disclosure.

(a) Whenever an issuer, or any person acting on its behalf, discloses any material nonpublic information regarding that issuer or its securities to any person described in paragraph (b)(1) of this section, the issuer shall make public disclosure of that information as provided in § 243.101(e):

(1) Simultaneously, in the case of an intentional disclosure; and

(2) Promptly, in the case of a non-intentional disclosure.

(b)(1) Except as provided in paragraph (b)(2) of this section, paragraph (a) of this section shall apply to a disclosure made to any person outside the issuer:

(i) Who is a broker or dealer, or a person associated with a broker or dealer, as those terms are defined in Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a));

(ii) Who is an investment adviser, as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)); an institutional investment manager, as that term is defined in Section 13(f)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(5)), that filed a report on Form 13F (17 CFR 249.325) with the Commission for the most recent quarter ended prior to the date of the disclosure; or a person associated with either of the foregoing. For purposes of this paragraph, a ''person associated with an investment adviser or institutional investment manager'' has the meaning set forth in Section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)), assuming for these purposes that an institutional investment manager is an investment adviser;

(iii) Who is an investment company, as defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), or who would be an investment company but for Section 3(c)(1) (15 U.S.C. 80a–3(c)(1)) or Section 3(c)(7) (15 U.S.C. 80a–3(c)(7)) thereof, or an affiliated person of either of the foregoing. For purposes of this paragraph, ''affiliated person'' means only those persons described in Section 2(a)(3)(C), (D), (E), and (F) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)(C), (D), (E), and (F)), assuming for these purposes that a person who would be an investment company but for Section 3(c)(1) (15 U.S.C. 80a–3(c)(1)) or Section 3(c)(7) (15 U.S.C. 80a–3(c)(7)) of the Investment Company Act of 1940 is an investment company; or

(iv) Who is a holder of the issuer's securities, under circumstances in which it is reasonably foreseeable that the person will purchase or sell the issuer's securities on the basis of the information.

(2) Paragraph (a) of this section shall not apply to a disclosure made:

(i) To a person who owes a duty of trust or confidence to the issuer (such as an attorney, investment banker, or accountant);

(ii) To a person who expressly agrees to maintain the disclosed information in confidence;

(iii) To an entity whose primary business is the issuance of credit ratings, provided the information is disclosed solely for the purpose of developing a credit rating and the entity's ratings are publicly available; or

(iv) In connection with a securities offering registered under the Securities Act, other than an offering of the type described in any of Rule 415(a)(1)(i)–(vi) (§ 230.415(a)(1)(i)–(vi) of this chapter).

§ 243.101 Definitions.

This section defines certain terms as used in Regulation FD (§§ 243.100 –243.103).

(a) *Intentional.* A selective disclosure of material nonpublic information is ''intentional'' when the person making the disclosure either knows, or is reckless in not knowing, that the information he or she is communicating is both material and nonpublic.

(b) *Issuer.* An ''issuer'' subject to this regulation is one that has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*), or is required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), including any closed-end investment company (as defined in Section 5(a)(2) of the Investment Company Act of 1940) (15 U.S.C. 80a–5(a)(2)), but not including any other investment company or any foreign government or foreign private issuer, as those terms are defined in Rule 405 under the Securities Act (§ 230.405 of this chapter).

(c) *Person acting on behalf of an issuer.* ''Person acting on behalf of an issuer'' means any senior official of the issuer (or, in the case of a closed-end investment company, a senior official of the issuer's investment adviser), or any other officer, employee, or agent of an issuer who regularly communicates with any person described in § 243.100(b)(1)(i), (ii), or (iii), or with holders of the issuer's securities. An officer, director, employee, or agent of an issuer who discloses material nonpublic information in breach of a duty of trust or confidence to the issuer shall not be considered to be acting on behalf of the issuer.

(d) *Promptly.* ''Promptly'' means as soon as reasonably practicable (but in no event after the later of 24 hours or the commencement of the next day's trading on the New York Stock Exchange) after a senior official of the issuer (or, in the case of a closed-end investment company, a senior official of the issuer's investment adviser) learns that there has been a non-intentional disclosure by the issuer or person acting on behalf of the issuer of information that the senior official knows, or is reckless in not knowing, is both material and nonpublic.

(e) *Public disclosure.* (1) Except as provided in paragraph (e)(2) of this section, an issuer shall make the ''public disclosure'' of information required by § 243.100(a) by furnishing to or filing with the Commission a Form 8–K (17 CFR 249.308) disclosing that information.

(2) An issuer shall be exempt from the requirement to furnish or file a Form 8–K if it instead disseminates the information through another method (or combination of methods) of disclosure that is reasonably designed to provide broad, non-exclusionary distribution of the information to the public.

(f) *Senior official.* ''Senior official'' means any director, executive officer (as defined in § 240.3b–7 of this chapter), investor relations or public relations officer, or other person with similar functions.

(g) *Securities offering.* For purposes of § 243.100(b)(2)(iv):

(1) *Underwritten offerings.* A securities offering that is underwritten commences when the issuer reaches an understanding with the broker-dealer that is to act as managing underwriter and continues until the later of the end of the period during which a dealer must deliver a prospectus or the sale of the securities (unless the offering is sooner terminated);

(2) *Non-underwritten offerings.* A securities offering that is not underwritten:

(i) If covered by Rule 415(a)(1)(x) (§ 230.415(a)(1)(x) of this chapter), commences when the issuer makes its first bona fide offer in a takedown of securities and continues until the later of the end of the period during which each dealer must deliver a prospectus or the sale of the securities in that takedown (unless the takedown is sooner terminated);

(ii) If a business combination as defined in Rule 165(f)(1) (§ 230.165(f)(1) of this chapter), commences when the first public announcement of the transaction is made and continues until the completion of the vote or the expiration of the tender offer, as applicable (unless the transaction is sooner terminated);

(iii) If an offering other than those specified in paragraphs (a) and (b) of this section, commences when the issuer files a registration statement and continues until the later of the end of the period during which each dealer must deliver a prospectus or the sale of the securities (unless the offering is sooner terminated).

§ 243.102 No effect on antifraud liability.

No failure to make a public disclosure required solely by § 243.100 shall be deemed to be a violation of Rule 10b–5 (17 CFR 240.10b–5) under the Securities Exchange Act.

§ 243.103 No effect on Exchange Act reporting status.

A failure to make a public disclosure required solely by § 243.100 shall not affect whether:

(a) For purposes of Forms S–2 (17 CFR 239.12), S–3 (17 CFR 239.13) and S–8 (17 CFR 239.16b) under the Securities Act, an issuer is deemed to have filed all the material required to be filed pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) or, where applicable, has made those filings in a timely manner; or

(b) There is adequate current public information about the issuer for purposes of § 230.144(c) of this chapter (Rule 144(c)).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 is amended by adding the following citations:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted; Section 249.308 is also issued under 15 U.S.C. 80a–29.

* * * * *

§ 249.308 [Amended]

6. Section 249.308 is amended by revising the phrase ''Rule 13a–11 or Rule 15d–11 (§ 240.13a–11 or § 240.15d–11 of this chapter)'' to read ''Rule 13a–11 or Rule 15d–11 (§ 240.13a–11 or § 240.15d–11 of this chapter) and for reports of nonpublic information required to be disclosed by Regulation FD (§§ 243.100 and 243.101 of this chapter)''.

7. Form 8–K (referenced in § 249.308) is amended:

a. in General Instruction A, by revising the phrase ''Rule 13a–11 or Rule 15d–11'' to read ''Rule 13a–11 or Rule 15d–11, and for reports of nonpublic information required to be disclosed by Regulation FD (17 CFR 243.100 and 243.101)''.

b. by adding one sentence to the end of paragraph 1 of General Instruction B;

c. in General Instruction B, by adding a new paragraph 2;

d. in General Instruction B.4., by revising the phrase ''other events of material importance pursuant to Item 5,'' to read ''other events of material importance pursuant to Item 5 and of information pursuant to Item 9,'';

e. in General Instruction B. by adding a new paragraph 5;

f. in Item 5 of Information to be Included in the Report by adding a new sentence at the end of the paragraph;

g. by adding a new Item 9 under ''Information to be Included in the Report'', to read as follows:

Note: The text of Form 8–K does not, and these amendments will not, appear in the Code of Federal Regulations.

Form 8–K

* * * * *

General Instructions

* * * * *

B. Events To Be Reported and Time for Filing of Reports

1. * * * A registrant either furnishing a report on this form under Item 9 or electing to file a report on this form under Item 5 solely to satisfy its obligations under Regulation FD (17 CFR 243.100 and 243.101) must furnish such report or make such filing in accordance with the requirements of Rule 100(a) of Regulation FD (17 CFR 243.100(a)).

2. The information in a report furnished pursuant to Item 9 shall not be deemed to be ''filed'' for the purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, except if the registrant specifically states that the information is to be considered ''filed'' under the Exchange Act or incorporates it by

reference into a filing under the Securities Act or the Exchange Act.

* * * * *

5. A registrant's report under Item 5 or Item 9 will not be deemed an admission as to the materiality of any information in the report that is required to be disclosed solely by Regulation FD.

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

* * * * *

Item 5. Other Events and Regulation FD Disclosure.

* * * The registrant may, at its option, file a report under this item disclosing the nonpublic information required to be disclosed by Regulation FD (17 CFR 243.100–243.103).

* * * * *

Item 9. Regulation FD Disclosure.

Unless filed under Item 5, report under this item only information the registrant elects to disclose through Form 8–K pursuant to Regulation FD (17 CFR 243.100–243.103).

* * * * *

Dated: August 15, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–21156 Filed 8–23–00; 8:45 am]

BILLING CODE 8010–01–U

Federal Register

Thursday,
August 24, 2000

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125

Revisions to Digital Flight Data Recorder Requirements for Airbus Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125

[Docket No. FAA–2000–7830; Amendment Nos. 121–278 & 125–34]

RIN 2120–AH08

Revisions to Digital Flight Data Recorder Requirements for Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action amends the flight data recorder regulations by adding language to allow certain Airbus airplanes to record certain data parameters using resolution requirements that differ slightly from the current regulation. This amendment is necessary because the Airbus airplanes are unable to record certain flight parameters under the existing criteria without undergoing unintended and expensive retrofit.

DATES: This final rule is effective August 18, 2000.

Comments must be submitted on or before September 25, 2000.

ADDRESSES: Comments on this final rule should be mailed or delivered, in duplicate to: U.S. Department of Transportation Dockets, Docket No. FAA–2000–7830, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. You may also submit comments through the internet to http://dms.dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Gary E. Davis, Air Transportation Division (AFS–201), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2000–7830. The postcard will be date-stamped by the FAA and mailed to the commenter.

Availability of Final Rule

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339), or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm, or the Government Printing Office's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.gov.

Background

Statement of the Problem

After the amendments to the DFDR requirements became effective on August 18, 1997 (62 FR 38362), the FAA began receiving telephone inquiries, requests for meetings, and petitions for exemption from Airbus Industrie (Airbus) concerning the economic impact of the amendments on certain Airbus airplanes. Airbus claimed that in order to comply with the new DFDR recording requirements of 14 CFR Appendix M, its A300 B2/B4 series, A318/A319/A320/A321 series, and its A330/A340 series airplanes would have to undergo major equipment retrofits. During the rulemaking, the FAA had stated that the rule was being tailored to avoid major equipment retrofits.

The digital flight data recorders (DFDRs) in the affected Airbus airplanes already record the required parameters, but some of the resolution and sampling intervals for certain parameters differ slightly from those required by Appendix M. Airbus noted this difference in its comment to the NPRM, but the comment was not fully addressed in the preamble to the final rule, issued in August 1997.

History of Amendments to DFDR Requirements

On February 22, 1995, the NTSB recommended that the FAA require upgrades of the flight data recorders installed on certain airplanes to record certain additional parameters not required by the current regulations. Two of the recommendations made by the NTSB affected the subject Airbus airplanes:

Recommendation No. A–95–26. Amend, by December 31, 1995, 14 CFR

§§ 121.343, 125.225, and 135.152 to require that Boeing 727 airplanes, Lockheed L–1011 airplanes, and all transport category airplanes operated under 14 CFR Parts 121, 125, or 135 whose type certificates apply to airplanes still in production, be equipped to record on a flight data recorder system, as a minimum, the parameters listed in ''Proposed Minimum FDR Parameter Requirements for Airplanes in Service'' plus any other parameters required by current regulations applicable to each individual airplane. Specify that the airplanes be so equipped by January 1, 1998, or by the later date when they meet Stage 3 noise requirements but, regardless of Stage 3 compliance status, no later than December 31, 1999. (Classified as Class II, Priority Action)

Recommendation No. A–95–27. Amend, by December 31, 1995, 14 CFR 121.343, 125.225, and 135.152 to require that all airplanes operated under 14 CFR Parts 121, 125, or 135, having 10 or more seats, and for which an original airworthiness certificate is received after December 31, 1996, record the parameters listed in ''Proposed FDR Enhancements for Newly Manufactured Airplanes'' on a flight data recorder having at least a 25-hour recording capacity. (Classified as Class II, Priority Action)

Notice of Proposed Rulemaking

On July 16, 1996, the FAA published a notice of proposed rulemaking (NPRM) (Notice No. 96–7, 61 FR 37143) addressing revisions to DFDR rules. The proposals were based on the NTSB recommendations, information obtained through a public hearing, and the efforts of the Aviation Rulemaking Advisory Committee.

As part of its comment to the proposed rule, Airbus stated that there were current recorder systems that record the required parameters at sampling rates or resolutions that differ from the proposed Appendix M. Airbus commented that the rates and resolutions be changed since meeting them would impose significant retrofit costs on operators of Airbus airplanes. It was not until Airbus petitioned for exemption from the Appendix M requirements that FAA focused its attention on its response to the Airbus comment, the significant number of Airbus airplanes involved, and the minor variations that would be required from Appendix M requirements. As stated previously, it was never the intention of the FAA to require operators of any airplanes to incur significant equipment retrofit costs in order to comply with the requirements for DFDR upgrades.

The FAA believes that had it fully understood the overall impact the final rule would place on operators of Airbus airplanes, it would have made specific provisions to reduce or eliminate that impact in the final rule.

Petitions for Exemption and Rulemaking

On April 9, 1998, Airbus petitioned the FAA, on behalf of operators of Airbus aircraft, for permanent exemptions from part 121, Appendix M, and Part 125, Appendix E. Airbus requested that the A318/A319/320/321 series aircraft and A330/A340 series aircraft be exempted from the recording resolution requirements and be allowed to record alternatives for several parameters. On August 24, 1999, FAA published a final rule (64 FR 46117) addressing those requests, which have been incorporated into the Appendices to Part 121 and Part 125 as a series of 13 footnotes.

In a letter dated May 24, 2000, Airbus filed a petition for rulemaking that requested correction of an additional parameter (parameter 9 Thrust/power of each engine-primary flight crew reference) that it had inadvertently left off the petition for exemption (Docket Number 30065). Airbus also requested minor changes to the recording requirements for parameter 37 (drift angle), parameter 42 (Power lever angle), and parameter 57 (Thrust command, for International Aero Engines only). Airbus submitted additional information on August 3, 2000, regarding parameter values. In its petition, Airbus stated that current Airbus A318, A319, A320, A321, A330, and A340 series airplanes are equipped with a digital flight data recording system (DFDRS) that records all mandatory parameters, numbers 1 through 88. Airbus further stated that, in order to appropriately revise the resolution and sampling requirements of Appendix M to Part 121 and Appendix E to Part 125, specific additional changes are needed as follows:

For A330/A340 Series Aircraft

Parameter 9, Thrust/Power of each engine-primary flight crew reference: Exhaust Pressure Ratio (EPR) Actual (A330 with Pratt and Whitney Engines), is required to have a resolution of 0.2% by the present regulation and is implemented as 0.22%;

Parameter 9, Thrust/Power of each engine-primary flight crew reference: EPR Actual (A330 with Rolls Royce engines), is required to have a resolution of 0.2% by the present regulation and is implemented as .29%;

Parameter 37, Drift Angle, is required to have a resolution of 0.1 degrees by the present regulation, and is implemented as 0.352 degrees;

Parameter 42, Throttle/power lever position (A330/340 Series), is required to have a resolution of 2% by the present regulation, and is implemented as 3.27% of full range for throttle lever angle (TLA); for reverse thrust, reverse throttle lever angle (RLA) resolution is nonlinear over the active reverse thrust range, which is 51.54 degrees to 96.14 degrees. The resolved element is 2.8 degrees uniformly over the entire active reverse thrust range, or 2.9% of the full range value of 96.14 degrees;

For A318/A319/320/321 Series Aircraft

Parameter 42, Throttle/power lever position, is required to have a resolution of 2%, but is implemented as 4.32% of full range;

Parameter 57, Thrust command (EPR, for International Aero Engines only) is required to have a resolution of 2%, but is implemented at 2.58%.

FAA Determinations

The FAA has previously determined that it would not be appropriate to grant an exemption to Airbus on behalf of the operators of its aircraft. Even if exemptions were granted to individual operators, they would have to be permanent. The FAA has determined that, under such circumstances, a change to the rule language of Appendix M is the only appropriate means to account for the differences in some DFDR equipment. Accordingly, the FAA is amending part 121 Appendix M, and Part 125 Appendix E to indicate that certain airplanes may continue to record the indicated parameters using the rates and resolutions listed. It is the FAA's understanding that this amendment will apply to Airbus aircraft. The FAA consulted informally with the NTSB concerning this variation, and the NTSB indicated that the proposed change would not significantly affect its ability to investigate accidents or incidents.

The FAA has determined that these changes will not adversely affect the safety of the aircraft, hinder the investigation of accidents or incidents by the NTSB, nor compromise the intent of the DFDR rules. This amendment will revise the resolution recording requirements of parameters 9, 37, 42 and 57. The FAA has determined that these changes can be accommodated by footnotes in Appendix M to part 121 and Appendix E to part 125.

Good Cause for Immediate Adoption

Sections 553(b)(3)(B) and 553 (d)(3) of the Administrative Procedure Act (APA)

(5 U.S.C. Sections 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find ''good cause'' to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

The FAA finds that notice and public comment to this final rule are impracticable, unnecessary, and contrary to the public interest. This final rule amends the flight data recorder regulations by adding language to the appendices of parts 121 and 125 to allow certain airplanes to record certain data parameters using resolution and sampling requirements that differ slightly from the current regulation. As a result, the FAA has determined that notice and public comment are unnecessary because the change effectuates the original intent of the regulation, is not controversial, and is unlikely to result in adverse comments.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. The FAA is not allowed to propose or adopt a regulation unless a reasoned determination is made that the benefits of the intended regulation justify the costs. The FAA's assessment has determined that there are no costs associated with this final rule. Since its costs and benefits do not make it a ''significant regulatory action'' as defined in the order, the FAA has not prepared a ''regulatory evaluation,'' which is the written cost/benefit analysis ordinarily required for all rulemaking documents under the DOT Regulatory Policies and Procedures. The FAA does not need to do the latter analysis where the economic impact of a final rule is minimal.

The FAA has determined that there are no costs associated with this final rule; the rule imposes no costs upon operators. Instead, this rule change relieves operators from a regulatory burden that was inadvertently imposed on them in the adoption of the 1997 regulations, and would have an impact beginning August 18, 2000. This change effectuates the original intent of the 1997 regulations.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that there are no costs associated with this final rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule and has determined that it will impose little or no costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the states, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule will not have federalism implications.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this final rule.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, Appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 121

Air carriers, Aviation safety, Reporting and record keeping requirements, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and record keeping requirements.

The Amendment

Accordingly, the Federal Aviation Administration amends parts 121 and 125 of Chapter 1 of Title 14 of the Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. In Appendix M, the title of the Appendix, and item numbers 9, 37, 42, and 57 are revised to read as follows:

Appendix M to Part 121—Airplane Flight Recorder Specifications

The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second.

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
9. Thrust/power on each engine-primary flight crew reference [14]	* * *	* * *	* * *	* * *	* * *
* * *	* * *	* * *	* * *	* * *	* * *
37. Drift Angle [15]	* * *	* * *	* * *	* * *	* * *
* * *	* * *	* * *	* * *	* * *	* * *
42. Throttle/ Power Lever Position [16]	* * *	* * *	* * *	* * *	* * *
* * *	* * *	* * *	* * *	* * *	* * *
57. Thrust Command [17]	* * *	* * *	* * *	* * *	* * *

[14] For A330 Airplanes with PW or RR Engines, resolution = .29%.

[15] For A330/A340 series airplanes, resolution = 0.352 degrees.

[16] For A318/A319/A320/A321 series airplanes, resolution = 4.32%. For A330/A340 series airplanes, resolution is 3.27% of full range for throttle lever angle (TLA); for reverse thrust, reverse throttle lever angle (RLA) resolution is nonlinear over the active reverse thrust range, which is 51.54 degrees to 96.14 degrees. The resolved element is 2.8 degrees uniformly over the entire active reverse thrust range, or 2.9% of the full range value of 96.14 degrees.

[17] For A318/A319/A320/A321 series airplanes, with IAE engines, resolution = 2.58%.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

3. The authority citation for Part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 4472.

4. In Appendix E, the title of the Appendix, and item numbers 9, 37, 42, and 57 are revised to read as follows:

Appendix E to Part 125—Airplane Flight Recorder Specifications

The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second.

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
9. Thrust/power on each engine-primary flight crew reference [14]	* * *	* * *	* * *	* * *	* * *
* * *	* * *	* * *	* * *	* * *	* * *
37. Drift Angle [15]	* * *	* * *	* * *	* * *	* * *
* * *	* * *	* * *	* * *	* * *	* * *
42. Throttle/ Power Lever Position [16]	* * *	* * *	* * *	* * *	* * *
* * *	* * *	* * *	* * *	* * *	* * *
57. Thrust Command [17]	* * *	* * *	* * *	* * *	* * *

[14] For A330 Airplanes with PW or RR Engines, resolution = .29%.
[15] For A330/A340 series airplanes, resolution = 0.352 degrees.
[16] For A318/A319/A320/A321 series airplanes, resolution = 4.32%. For A330/A340 series airplanes, resolution is 3.27% of full range for throttle lever angle (TLA); for reverse thrust, reverse throttle lever angle (RLA) resolution is nonlinear over the active reverse thrust range, which is 51.54 degrees to 96.14 degrees. The resolved element is 2.8 degrees uniformly over the entire active reverse thrust range, or 2.9% of the full range value of 96.14 degrees.
[17] For A318/A319/A320/A321 series airplanes, with IAE engines, resolution = 2.58%.

Issued in Washington, DC, on August 18, 2000.

Jane F. Garvey,

Administrator.

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Florida; comments due by 8-31-00; published 8-1-00

AGRICULTURE DEPARTMENT

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AGRICULTURE DEPARTMENT

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AGRICULTURE DEPARTMENT

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Western Alaska Community Development Quota Program; comments due by 8-31-00; published 7-17-00

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 3519/P.L. 106–264

Global AIDS and Tuberculosis Relief Act of 2000 (Aug. 19, 2000; 114 Stat. 748)

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